

# **CUSTOMS BULLETIN AND DECISIONS**

**Weekly Compilation of  
Decisions, Rulings, Regulations, Notices, and Abstracts  
Concerning Customs and Related Matters of the  
U.S. Customs Service  
U.S. Court of Appeals for the Federal Circuit  
and  
U.S. Court of International Trade**

**VOL. 33**

**DECEMBER 22, 1999**

**NO. 51**

*This issue contains:*  
U.S. Customs Service  
T.D. 99-91 and 99-92  
General Notices

**DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE**

## NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

**Please visit the U.S. Customs Web at:  
<http://www.customs.gov>**

# U.S. Customs Service

## *Treasury Decision*

(T.D. 99-91)

### BONDS

#### APPROVAL TO USE AUTHORIZED FACSIMILE SIGNATURES AND SEALS

The use of facsimile signatures and seals on Customs bonds by the following corporate surety has been approved effective this date:

New Hampshire Insurance Company

Authorized facsimile signature on file for:

Christine L. Wolfe, Attorney-in-Fact

The corporate surety has provided the Customs Service with a copy of the signature to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Dated: December 7, 1999.

JERRY LADERBERG,

*Chief,*

*Entry Procedures and Carriers Branch.*

(T.D. 99-92)

**EXTENSION OF CUSTOMS APPROVAL AS A COMMERCIAL GAUGER AND CUSTOMS ACCREDITATION AS A COMMERCIAL LABORATORY FOR SAYBOLT, INC.****AGENCY:** U.S. Customs Service, Department of the Treasury.**ACTION:** Notice of extension of approval as a commercial gauger and extension of accreditation as a commercial laboratory for Saybolt, Incorporated.

**SUMMARY:** Saybolt Inc. of Houston, Texas, an approved Customs gauger and accredited laboratory, has applied to U.S. Customs to extend its approval to gauge petroleum and petroleum products under § 151.13 of the Customs Regulations (19 CFR 151.13) and to extend its accreditation as a commercial laboratory under § 151.12 of the Customs Regulations (19 CFR 151.13) to their Tampa, Florida facility. Customs has determined that this office meets all of the requirements necessary for approval as a commercial gauger and accreditation as a commercial laboratory. Therefore, in accordance with § 151.13 of the Customs Regulations Saybolt Inc., of Tampa, Florida is approved to gauge the products named above in all Customs ports. Additionally, in accordance with § 151.12 of the Customs Regulations Saybolt Inc. of Tampa, Florida is granted accreditation to perform the following analysis: API Gravity; Distillation; Reid Vapor Pressure; Viscosity; Sediment by Extraction and Percent by Weight of Sulfur.

**LOCATION:** Incorporated approved site is located at: 1501 Delmar B. Drawdy Drive, Tampa, Florida, 33605.

**EFFECTIVE DATE:** September 6, 1999.

**FOR FURTHER INFORMATION CONTACT:** Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Suite 1500 North, Washington, D.C. 20229 at (202) 927-1060.

Dated: December 6, 1999.

GEORGE D. HEAVEY,  
*Executive Director,  
Laboratories and Scientific Services.*

[Published in the Federal Register, December 13, 1999 (64 FR 69594)]

# U.S. Customs Service

## *General Notices*

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, December 8, 1999.*

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

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### PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF WRAPPER/LABELS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of and treatment relating to the classification of wrapper/labels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the classification of labels used to wrap candies, and any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before January 21, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textiles Classification Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Textiles Branch, (202) 927-1031.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, and related laws. Two new concepts that emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the classification of wrapper/labels. Although in this notice Customs is specifically referring to one ruling, Customs Headquarters Ruling Letter (HQ) 083825, this notice covers any rulings relating to the specific issue of classification set forth in HQ 083825, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this issue that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue that is the subject of this notice should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar issue, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially

identical transactions or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision on this notice.

In HQ 083825, dated June 14, 1989, "Attachment A" to this document, the classification of wrapper/labels was determined to be under heading 4911, Harmonized Tariff Schedule of the United States (HTSUS), the provision for other printed matter. A review of that ruling has revealed that the classification is in error. The goods in question should have been classified under heading 4821, HTSUSA, which provides for paper labels of all kinds.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQ 083825 and any other ruling not specifically identified, or which concern identical or substantially similar merchandise, to reflect the proper classification of the subject wrapper/labels pursuant to the analysis set forth in proposed HQ 963603 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 2, 1999.

JOHN E. ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, June 14, 1989.  
CLA-2: CO:R:C:G 083825 jlj, 837185  
Category: Classification  
Tariff No. 4911.99.60 and 4911.99.80

MS. DORA DWYER, IMPORT MANAGER  
HAAS FOOD MANUFACTURING CORPORATION  
35 Prindle Hill Road  
Orange, CT 06477

Re: Classification of Pez candy wrappers.

DEAR MS. DWYER:

You requested a tariff classification for Pez candy wrappers manufactured in Austria. You submitted samples of the empty wrappers and of wrappers containing Pez candy.

**Facts:**

The wrappers at issue are sheets of paper measuring 2-1/8 inches by 2-1/4 inches. They are printed in various colors, with the Pez logo, the identifying words (lemon candy, orange candy, sugar-free lemon candy, etc.), the name and address of the candy's manufacturer, a

weight statement and a list of ingredients. The Pez candies are small hard candies which are wrapped first in foil, then in the instant wrappers. The instant wrappers are wrapped around the foil packages, and their ends are glued together to cover almost all the length of the candy.

*Issue:*

What is the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUSA) of the instant candy wrappers?

*Law and Analysis:*

The most essential feature of the instant wrappers is the printed information on them. As such, it might appear that the instant wrappers would be eligible for classification under the provisions for paper and paperboard labels of all kinds, whether or not printed, printed, in subheadings 4821.10.20 and 4821.10.40, HTSUSA, depending upon whether the labels are printed in whole or in part by a lithographic process.

The Explanatory Notes for Heading 4821 state that "This heading covers all varieties of paper labels whether of the stick-on type or for affixing by string or other method to any kind of article, package, etc."

While the instant candy wrappers serve to label the candy, they also serve to wrap it. The foil wrappers are not glued or secured in any way; they are only wrapped around the candy. The instant wrappers are the packing which wraps and secures the candy. As such, the instant wrappers are more than labels.

Inasmuch as the wrappers are printed all over the area which will show once the wrappers are glued around the candy, the essential character of the wrappers is printed matter. They must be classified accordingly in Chapter 49. There are no specific provisions for printed paper wrappers, therefore they must be classified in Heading 4911, as other printed matter. Inasmuch as the wrappers are not more specifically provided for elsewhere, they are classified in subheading 4911.99.60, HTSUSA, under the provision for other printed matter, including printed pictures and photographs: other: other: other: printed on paper in whole or in part by a lithographic process, if they are printed in whole or in part by lithography, or in subheading 4911.99.80, HTSUSA, if they are not printed in whole or in part by lithography. Subheading 4911.99.60, HTSUSA, is dutiable at the general rate of 0.4 percent ad valorem, while subheading 4911.99.80, HTSUSA, is dutiable at the general rate of 4.9 percent ad valorem.

*Holding:*

The Pez candy wrappers are classified in subheading 4911.99.60, HTSUSA, if they are printed in whole or in part by a lithographic process, or in subheading 4911.99.80, HTSUSA, if they are not printed by a lithographic process.

JOHN DURANT,  
Director,  
Commercial Rulings Division.

## [ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:TE 963603 PR

Category: Classification

Tariff No. 4821.10

IMPORT MANAGER  
PEZ MANUFACTURING CORPORATION  
35 Prindle Hill Road  
Orange, CT 06477

Re: Revocation of HQ 083825 and treatment relating to the classification of wrapper/label labels.

DEAR SIR OR MADAM:

On June 14, 1989, this office issued Customs Headquarters Ruling Letter (HQ) 083825, to Hass Food Manufacturing Corporation. We understand that Hass Food Manufacturing Corporation has changed its name to Pez Manufacturing Corporation. We have been asked by our New York office to reconsider the holding in HQ 083825. Our review of the matter indicates that the classification of HQ 083825 is incorrect and, therefore, this ruling revokes HQ 083825.

*Facts:*

The following description of the subject goods is contained in HQ 083825.

The wrappers at issue are sheets of paper measuring 2-1/8 inches by 2-1/4 inches. They are printed in various colors, with the Pez logo, the identifying words (lemon candy, orange candy, sugar-free lemon candy, etc.), the name and address of the candy's manufacturer, a weight statement and a list of ingredients. The Pez candies are small hard candies that are wrapped first in foil, then in the instant wrappers. The instant wrappers are wrapped around the foil packages, and their ends [edges] are glued together to cover almost all the length of the candy.

HQ 083825 held that the classification of wrapper/labels was under the provision for other printed matter, subheading 4911.10, Harmonized Tariff Schedule of the United States (HTSUS). The wrapper/labels are produced in Austria.

*Issue:*

The primary issue presented is whether the wrapper/labels in question are properly classifiable under subheading 4911.10, HTSUS, or whether the wrapper/labels should be classified under subheading 4823.90, which provides for other paper cut to size or shape, or under subheading 4821.10, HTSUS, which provides for printed "Paper and paperboard labels of all kinds." (italics added)

*Law and Analysis:*

Classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. If goods cannot be classified pursuant to GRI 1, then classification shall be according to the remaining GRIs in the order in which they appear. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. They facilitate classification under the HTSUS by offering guidance concerning the scope and meaning of the GRIs, notes, and headings.

The following HTSUS headings describe the subject wrapper/labels.

4821 Paper and paperboard labels of all kinds, whether or not printed:

\* \* \* \* \*

4911 Other printed matter, including printed pictures and photographs:

Heading 4823 is not applicable to the wrapper/labels because it begins with the word "Other", which, in this case, means any paper product other than those described previously in Chapter 48. Since heading 4821 describes the merchandise, heading 4823 does not.

The fact that the wrapper/labels in question serve dual purposes, *i.e.* enclosing the candies and being labels for the imported candies, does not negate their classification under heading 4821. This is not to say that any paper item purporting to be a label is classifiable within heading 4821. In this instance, the wrapper/labels are large and contain all the information and colors required and reasonably expected on a label. There is no mistaking the fact that the subject goods are clearly intended to be labels.

Since heading 4821 specifically describes the merchandise and heading 4911 merely describes a generic category of goods, the wrapper/labels are, pursuant to GRI 1, classifiable under heading 4821.

*Holding:*

The wrapper/labels are properly classifiable under heading 4821, which provides for printed paper labels *of all kinds*. If the wrapper/labels are printed in whole or in part by a lithographic process, they are classifiable in subheading 4821.10.20, HTSUS, with duty in 1999 at the column one rate of 4.4 cents per kilogram. If the wrapper/labels are not printed in whole or in part by a lithographic process, they are classifiable in subheading 4821.10.40, HTSUS, with duty in 1999 at the column one rate of 2.1 percent *ad valorem*.

HQ 083825, dated June 14, 1989, is hereby revoked

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
Washington, DC, December 22, 1999.

SUBJECT: INFORMED COMPLIANCE PUBLICATIONS

The philosophies of "informed compliance" and "shared responsibility" permeate the Customs modernization portion of the North American Free Trade Agreement Implementation Act (Title VI of Pub. Law 103-182). These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. In recognition of the complexity of importing and the value of adequate and timely information concerning importers' rights and obligations, the Customs Service has undertaken to provide the public with relevant information concerning its rights and responsibilities under Customs and related laws in a variety of formats. It is hoped that these efforts will assist the public in meeting its responsibility of using reasonable care to enter, classify and value imported merchandise.

During 1996, the Customs Service developed and released its "Informed Compliance Strategy." This Strategy identifies my office as "Customs principal provider of technical information" and indicates that "distribution of such information, intended to assist the trade in exercising reasonable care, will be made through numerous channels in a variety of media." In support of Customs Informed Compliance Strategy, my office produces and posts electronic copies of informed compliance publications on the Customs World Wide Web site. These electronic copies are available in a variety of downloadable formats.

To assist users of these publications and in response to numerous requests for printed copies, we are reproducing in this Customs Bulletin copies of the informed compliance publications in the "**What Every Member of the Trade Community Should Know About:** \* \* \*" series that have been posted on our Web site during this year.

The topics addressed by these publications are:

*Knit to Shape Apparel Products* (1/99)  
*Hats and Other Headgear* (under HTSUS 6505) (3/99)  
*Customs Enforcement of Intellectual Property Rights* (6/99)  
*Classification of Children's Apparel* (6/99)  
*Accreditation of Laboratories and Gaugers* (9/99)  
*Classification of Sets* (9/99)  
*Marking Requirements for Wearing Apparel* (9/99)  
*Fiber Trade Names & Generic Terms* (11/99)  
*NAFTA Country of Origin Rules for Monumental & Building Stone* (12/99)

In addition, Customs issued a revised publication on:

*Customs Value (Revised 12/99)*

During 1998, Customs issued the following Informed Compliance Publications, which were reprinted in the December 23, 1998 Customs Bulletin (Vol. 32, No. 51) and are also available on the Customs Web site:

*Ribbons & Trimmings*

*Agriculture Actual Use*

*Reasonable Care*

*Footwear*

*Drawback*

*Lamps, Lighting & Candle Holders*

*Rules of Origin*

*ABC's of Prior Disclosure*

*Records and Recordkeeping Requirements*

*Gloves, Mittens and Mitts*

*Waste & Scrap under Chapter 81*

*Tableware, Kitchenware, Other Household Articles and Toilet*

*Articles of Plastics*

*Textile & Apparel Rules of Origin-Index of Rulings*

In addition, Customs issued revised publications on:

*Textile & Apparel Rules of Origin*

*NAFTA Eligibility and Building Stone*

During 1997, Customs issued the following Informed Compliance Publications, which were reprinted in the January 21, 1998 Customs Bulletin (Vol. 32, No. 2/3) and are also available on the Customs Web site:

*Granite*

*Caviar*

*Distinguishing Bolts from Screws*

*Internal Combustion Piston Engines*

*Vehicles, Parts and Accessories*

*Articles of Wax, Artificial Stone and Jewelry*

*Tariff Classification Under The Harmonized Tariff Schedule*

*Classification of Festive Articles*

During 1996, Customs issued the following Informed Compliance Publications, which were reprinted in the January 2, 1997 Customs Bulletin (Vol. 30/31, No. 52/1) and are also available on the Customs Web site:

*Customs Value (revised 12/99)*

*Buying and Selling Commissions*

*Bona Fide Sales and Sales for Exportation*

*NAFTA for Textiles and Textile Articles*

*Textile & Apparel Rules of Origin (revised 11/98)*

*Fibers and Yarn*

*Raw Cotton: Tariff Classification and Import Quotas*

*Marble*

*Mushrooms*

*Peanuts*

The Customs Web site was established to provide interested parties with free, current, and relevant information regarding Customs operations and items of special interest. Included are proposed regulations, Customs publications and notices, rulings, and news releases.

Access to Customs Web site is available 24-hours per day, seven days a week at <http://www.customs.gov>.

STUART P. SEIDEL,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

What Every Member of the  
Trade Community Should Know About:

# *Knit to Shape Apparel Products*



An Advanced Level  
Informed Compliance Publication of the  
U.S. Customs Service

January 1999

**NOTICE:**

This publication was prepared for the guidance and information of the trade community. It reflects the Customs Service's position or interpretation of the applicable laws or regulations as of the date of publication, as shown on the front cover. It does not in any way replace or supersede the laws or regulations. Only the latest official version of the laws or regulations is authoritative.

*Publication History**First Issued: January 1999***PRINTING NOTE:**

This publication was designed for electronic distribution via the Customs Electronic Bulletin Board and Customs Internet World Wide Web site (<http://www.customs.ustreas.gov>) and is being distributed in a variety of formats. It was originally set up in WordPerfect® 8 using an HP Laserjet 4 printer driver. Pagination and margins in downloaded versions may vary depending on the word processor and/or printer used. If you wish to maintain all the original settings, you may wish to download the .pdf version which can then be printed using the freely available Adobe Acrobat Reader®.

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, videos, and possibly CD-ROMs, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Textile Branch, Commercial Rulings Division, Office of Regulations and Rulings, has prepared this publication on *Knit to Shape Apparel Products*, as part of a series of informed compliance publications regarding the classification and origin of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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### KNIT TO SHAPE APPAREL PRODUCTS

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. §3592) provided statutory rules of origin for textiles and apparel entered, or withdrawn from warehouse for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21 of the Customs Regulations in the Federal Register, implementing Section 334 (60 FR 46188). Thus, as of July 1, 1996, the country of origin of a textile or apparel product has been determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Customs has sought to maintain consistency in the application of section 102.21 since the rules of origin came into force. Although Customs has been successful in establishing sound criteria through determinations based on manufacturing processes with respect to most textile articles, there has been some confusion with respect to those articles referred to as "knit to shape." As a result of many of the inquiries received by Customs with respect to knit to shape articles, and recent developments addressing the interpretation of "knit to shape," this document is intended to clarify many of the ambiguities that have arisen. Although we realize that this publication focuses, for the most part, on knit to shape upper body garments, the principles set forth in this document are applicable to all "knit to shape" goods.

In that respect, Customs has worked closely with many interested parties in forming an open dialogue addressing many of the issues discussed in this document. What has resulted is a successful collaboration of the constant communication between Customs and the trade. This is in keeping with the spirit of the Customs Modernization Act (December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057), generally referred to as the "Mod Act," which is premised on the idea that in order to maximize and facilitate compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. In essence, the Mod Act imposes a greater obligation on both Customs and the trade to share responsibility in carrying out import requirements.

#### **I. Definitions and Customs Interpretation**

The relevant provision in the Customs Regulations which defines "knit to shape" is section 102.21(b), which states, in relevant part:

(3) **Knit to shape.** The term **knit to shape** applies to any good of which 50 Percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether a good is "knit to shape."

(4) **Major parts.** The term **major parts** means integral components of a good but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts.

In applying this provision to knit to shape articles, Customs has held that a major knit garment panel which is stated to be "knit to shape" but is not contoured at critical points like the neck and armholes, does not qualify as a knit to shape panel. As such, in those cases where, for example, a front or back panel is cut to shape at the neck or armholes, Customs has concluded that the panel is not knit to shape, as per the terms of section 102.21(b). However, as a caveat to this rule, Customs has indicated that where a knit garment consists of, for example, a front panel that is not determined to be knit to shape, but a back panel and sleeves that do qualify as knit to shape panels, the garment as a whole qualifies as a knit to shape good. The rationale being that as per the definition of "knit to shape" in section 102.21(b), the term knit to shape applies to any good of which 50 percent or more of the exterior surface is formed by major parts that have been knitted or crocheted directly to shape. Accordingly, in that situation, that is, where the back panel and sleeves are major parts which constitute "50 percent or more" of the exterior surface of the good, the article qualifies as a knit to shape good.

Headquarters Ruling Letter 960871, dated November 24, 1997, addressed the country of origin of two styles of women's knit pullovers that featured among other things, one style which had front and back panels which as knit, were fully contoured at the armholes, side seams, shoulders and bottom, requiring cutting at the neck along the lines of demarcation, and a second style with front and back panels with lines of demarcation at the neck and armholes and sleeve panels knit with lines of demarcation at the armholes. The type of lines of demarcation in those garments included a subtle change in the knit fabric, *i.e.*, from a two by two rib to a two by one rib, and a series of small holes, both types forming semi-circular patterns as an indication of where the cutting would take place. In that ruling, Customs stated that "regardless of how the lines of demarcation are fashioned, the fact remains that without subsequent cutting operations, the garments would either lack a neck opening or arm openings. As such, the cutting to shape of the panel to form the neck contour or the cutting to shape at the sleeves to form the armholes goes beyond the "minor cutting" envisioned by section 102.21(b)." Consequently, both garments in HQ 960871 were not considered "knit to shape."

Subsequent to the issuance of that ruling, Customs interpretation of "knit to shape," particularly with respect to its position on "lines of demarcation," was called into question. In response to these concerns, Customs revisited its position on "knit to shape" and "lines of demarcation." In HQ 960516, dated July 14, 1998, Customs issued the first ruling on a knit to shape good which in effect softened its position on those two critical issues. That ruling was followed by HQ 961828, dated July

27, 1998, and HQ 961981, dated September 3, 1998, both of which served to clarify Customs interpretation of "knit to shape" expressed in HQ 960516. Simply stated, the rationale in those three rulings addressed lines of demarcation in panels and basically confirmed that, in Customs view, if a garment panel featured:

- a. lines of demarcation which are continuous, with clear starting and ending points, thus, "clear and unambiguous" lines of demarcation; and
- b. the lines are created by a change in pattern which is knit directly into the fabric; and
- c. a self-start bottom

the garment panel is considered "knit to shape." Of course, a panel with a self-start bottom and which is knit directly to shape on the knitting machine, that is, with the neckline and arm holes formed during the knitting process, also qualifies as knit to shape.

## **II. Additional Questions**

Further guidance was requested in terms of clarification on a number of issues which had either not been addressed or required further detail. In order to facilitate this clarification process between Customs and the trade, several interested parties submitted a number of knit garment panels as examples of certain construction methods which exist in the apparel industry. By reviewing those samples and providing feedback, it is Customs belief that such guidance will enable importers to more fully comprehend the origin implications of the various construction methods used in knit goods.

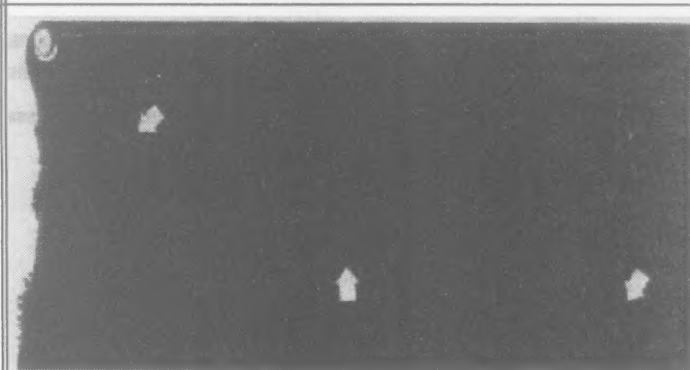
<b><u>I. Self-Start Bottom</u></b>	
<b>Comment</b>	<b>Response</b>
Is a "Self-Start bottom" a prerequisite for a knit to shape panel?	Yes. A Self-Start bottom is a prerequisite for a knit to shape front, back or sleeve panel.
How does Customs define a "Self-Start bottom"?	Customs defines "Self-Start bottom" as a finished bottom edge which is the beginning of a continuously knit garment. As such, the edge is finished when it comes off the machine. Similarly, sleeves must exhibit the same type of self-start end, usually at the bottom of the sleeve or cuff. The sleeve panels should be either shaped or feature acceptable lines of demarcation.

**II. Beyond a Self-Start Bottom**

Comment	Response
<p>If a panel has a self-start bottom, what else does it need to qualify as "knit to shape"?</p>	<p>If a front or back panel features a self-start bottom, <i>either</i> the armholes or the neck hole must be shaped or marked with clearly acceptable lines of demarcation. As further clarification we would add the following examples:</p> <p><b>A.</b> A square panel with a self-start bottom and no shaping at either the neck or armhole is not knit to shape.</p> <p><b>B.</b> A panel with a self-start bottom and shaping only at the neck is knit to shape.</p> <p><b>C.</b> A panel with a self-start bottom and clear lines of demarcation at the neck is knit to shape</p> <p><b>D.</b> A panel with a self-start bottom and shaping only at the arm holes is knit to shape</p> <p><b>E.</b> A panel with a self-start bottom and clear lines of demarcation at the arm holes is knit to shape.</p> <p><b>F.</b> A panel with a self-start bottom and shaping at the neck and clear lines of demarcation at the arm holes is knit to shape.</p> <p><b>G.</b> A panel with a self-start bottom and clear lines of demarcation at the neck and shaping at the armholes is knit to shape.</p>
<p>Can several panels knit directly in a blanket of fabric with lines of demarcation separating each of the panels from one another, still be considered knit to shape?</p>	<p>Yes. So long as the lines of demarcation separate both the individual panels by clear and continuous lines of demarcation and each panel within the blanket of fabric meets the requirements for acceptable lines of demarcation at either the neck, armholes or sleeves.</p>

III. Lines of Demarcation	
Comment	Response
How does Customs define an acceptable line of demarcation?	Customs definition of an acceptable line of demarcation is a clearly visible change in knit pattern which is knit directly into the fabric, is continuous, and has clear starting and ending points.
Would the following lines of demarcation qualify as acceptable under Customs definition?	<b>We emphasize that the technical terminology (appearing in "underlines") that follows in examples A through E, are taken from submissions of actual samples received by Customs. They should in no way be taken to represent terminology which has been adopted by Customs in determining knit to shape panels. Terminology will vary from manufacturer to manufacturer.</b>

**Comment:** A. Referred to as "Links-Links with Jersey Needle" lines of demarcation knit into the fabric as in the arm hole opening lines



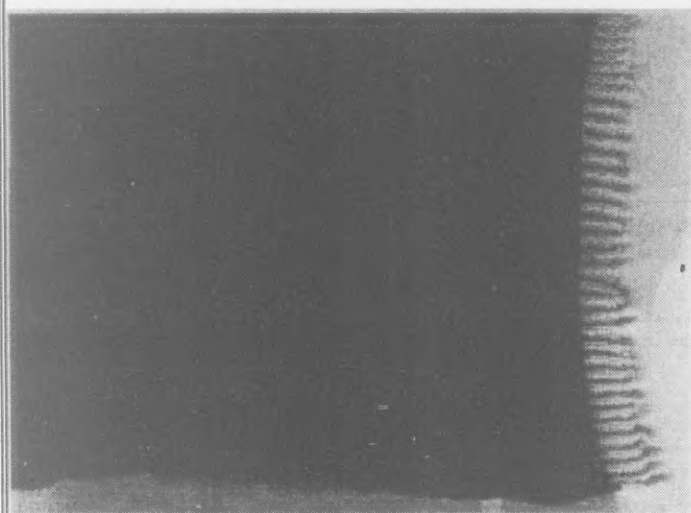
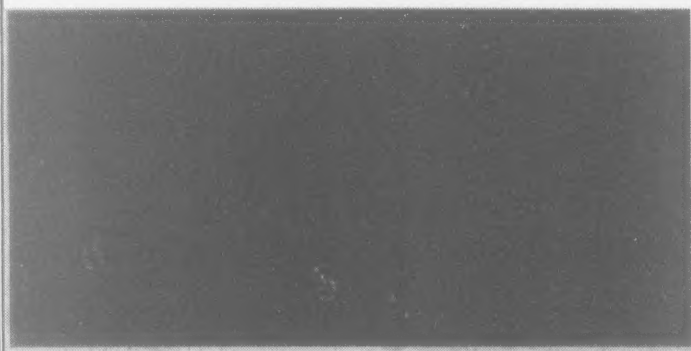
**Response:** A. The "links links with jersey needle" lines of demarcation, which in effect consist of a change in the knit pattern construction along the arm hole openings, with clear and continuous starting and ending points, qualify as acceptable.

**Comment:** B. Referred to as "Floating Jacquard with Drop Needle" lines of demarcation at the neck opening



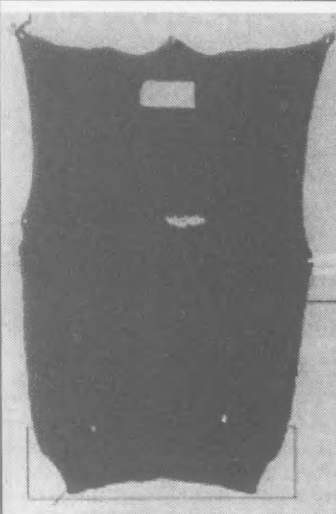
**Response:** B. The "floating jacquard with drop needle" lines of demarcation, which in effect consist of a change in the knit pattern construction along the neck opening in a semi-circular pattern, with clear and continuous starting and ending points, qualify as acceptable.

**Comment:** C. Referred to as "Half Milano with Pointelle" lines of demarcation at the arm hole openings



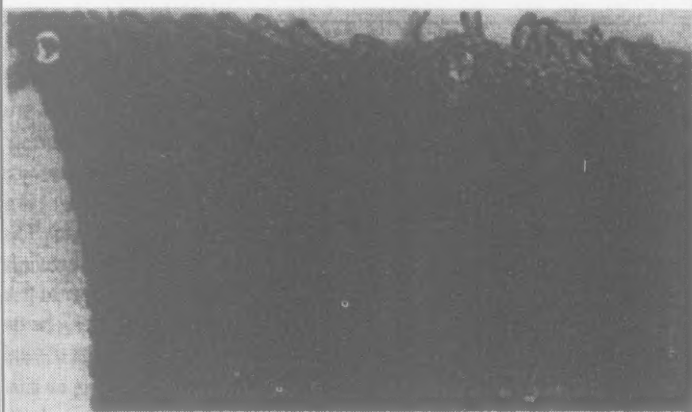
**Response:** C. The "half milano with pointelle" lines of demarcation which in effect consist of a series of holes knit along the arm hole openings, with clear and continuous starting and ending points, qualify as acceptable

**Comment:** D. Referred to as "Aran Cable Texture with Reverse Jersey" lines of demarcation at the neck and armhole openings



**Response:** D. The "aran cable texture with reverse jersey" lines of demarcation which in effect consist of a change in the knit pattern construction along the neck and arm hole openings pose a problem. Where the lines of demarcation are located around the neck opening, it is Customs view that those lines are unambiguous, continuous, and provide clear starting and ending points. The contour that is created by those lines is readily apparent and has the appearance of a clear semi-circular pattern which has been blocked for cutting. As such, the lines of demarcation at the neck qualify. What is referenced as "lines of demarcation" along the arm hole openings however, do not meet Customs definition. Although the construction of those "lines of demarcation," represent a change in the knit construction, it is Customs position upon examination of that panel, that the lines are ambiguous and lack a readily identifiable start and end point. It is difficult to distinguish what is referred to as "lines of demarcation" from the actual design pattern of the panel. As such although the panel itself would qualify as a knit to shape panel because of the presence of acceptable lines of demarcation at the neck, were that panel to feature only what is referred to as "lines of demarcation at the arm hole openings," the panel would then be precluded from consideration as a knit to shape panel.

**Comment:** E. Referred to as "Jacquard with Change in Color" lines of demarcation at the arm hole openings



**Response:** E. The "jacquard with change in color" lines of demarcation which in effect consist of a change in the color on the panel around the arm hole openings do not qualify as acceptable lines of demarcation. The change in color is not a change which is knit directly into the fabric, as for example a change in the knit construction. Additionally, it is Customs position that a change in color is not a clear and unambiguous line of demarcation with clear starting and ending points particularly because this change in color can easily be viewed as a simple function of color/pattern in the scheme of fashion and design.

#### **IV. Hoods.**

Comment	Response
Does Customs view a hood as a "major part" of a sweater which also must be taken into consideration for purposes of origin?	No. It is Customs position that the term "major parts" encompasses only the front, back and sleeve panels and does not include a hood.

<b>V. Shoulder Sloping.</b>	
<b>Comment</b>	<b>Response</b>
Does the process of "shoulder sloping" disqualify a part from being considered knit to shape?	<p>No. The process referred to as "shoulder sloping" has been described to Customs by some importers as follows:</p> <p>Front and back sweater panels, which are otherwise knit to shape under Customs current definition may have unfinished jersey edges at the shoulders. The front and back panels are joined together at the shoulders by linking/looping at an angle to conform to the wearer's shoulders. The excess triangular wedge of material that is created on the inside of the shoulders can be overlock stitched at the ends with a slight trimming (approximately <math>\frac{1}{4}</math> inch), leaving an excess (also referred to as a "butterfly seam"). In the alternative, the overlock stitching machine can trim a slightly larger amount of material as it sews (approximately about <math>\frac{1}{2}</math> inch).</p> <p>It is Customs position that shoulder sloping does not disqualify a panel from being knit to shape.</p>
Does the process of working the sleeve caps disqualify a part from being considered knit to shape?	<p>No. The process of working the "sleeve caps" has been described to Customs by some importers as follows:</p> <p>Similar to the process of shoulder sloping, the trimming of the excess material around the cap or shoulder area of the sleeve panel.</p> <p>In Customs view this trimming of excess material does not disqualify the panels from being considered a knit to shape panel.</p>

#### CONCLUSION

In conclusion, this document should not be viewed as an exhaustive representation of all of the issues which may be associated with "knit to shape" garments. This document does however represent Customs attempt to clarify a number of outstanding issues on Customs interpretation of that term. We emphasize the fact that the information provided in this publication is for general information purposes only. To obtain

an accurate origin determination reflective of the specific facts and circumstances which surround a specific importation, an importer should submit both a completed garment and the requisite panels as they come off the machine to obtain a binding ruling under the Customs Regulations, 19 CFR Part 177. If samples are not provided/submitted at the time of the ruling request, Customs may request samples before issuing a ruling. Requests may be sent to the Director, National Commodity Specialist Division, U.S. Customs Service, Att: Classification Ruling Requests, 6 World Trade Center, New York, NY, 10048, or Office of Regulations and Rulings, Commercial Rulings Division, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, DC 20229.

What Every Member of the  
Trade Community Should Know About:

# *The Classification of Hats and Other Headgear*

*(under HTSUS heading 6505)*



An Advanced Level  
Informed Compliance Publication of the  
U.S. Customs Service

March 1999

**NOTICE:**

This publication was prepared for the guidance and information of the trade community. It reflects the Customs Service's position or interpretation of the applicable laws or regulations as of the date of publication, as shown on the front cover. It does not in any way replace or supersede the laws or regulations. Only the latest official version of the laws or regulations is authoritative.

*Publication History*

*First Issued: March, 1999*

**PRINTING NOTE:**

This publication was designed for electronic distribution via the Customs Electronic Bulletin Board and Customs Internet World Wide Web site (<http://www.customs.ustreas.gov>) and is being distributed in a variety of formats. It was originally set up in WordPerfect® 8 using an HP LaserJet 5P printer driver (or Lexmark Optra N printer driver for two sided printing). Pagination and margins in downloaded versions may vary depending on the wordprocessor and/or printer used. If you wish to maintain all the original settings, you may wish to download the .pdf version which can then be printed using the freely available Adobe Acrobat Reader®.

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on *The Classification of Hats and Other Headgear (under HTSUS heading 6505)* as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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### INTRODUCTION

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs Service. In almost all cases, the goods are required to be "entered," that is, declared to the Customs Service, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs Service. As part of the entry process, goods must be "classified" (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use "reasonable care" to "enter," "classify" and "value" the goods and provide any other information necessary to enable the Customs Service to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Classifying goods is important not only for duty purposes, but also to determine whether the goods are subject to quotas, restraints, embargoes or other restrictions. The act of classifying goods is complex and requires an importer to be familiar with the *Harmonized Tariff Schedule of the United States* (HTSUS), its 99 chapters, rules of interpretation, and notes. A detailed discussion of the HTSUS may be found in a companion publication entitled, *What Every Member of the Trade Community Should Know about Tariff Classification*. Customs valuation requirements are separately discussed in a companion publication entitled, *What Every Member of the Trade Community Should Know about Customs Value*. Both of these publications are available from the Customs Electronic Bulletin Board and Customs World Wide Web pages on the Internet (see the Appendix for information on accessing these sources and obtaining additional Customs Service publications).

The purpose of this Informed Compliance publication is to advise importers, customs brokers and others of the various issues affecting the importation and tariff classification of hats and other headgear under heading 6505, HTSUS.

### HEADING 6505

Heading 6505 of the HTSUS provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed." This heading includes six-digit subheadings for "Hair-nets" (subheading 6505.10) and "Other" (subheading 6505.90).

The six-digit subheading 6505.90 is divided by component material and construction of the material into eight-digit subheadings. "Of cotton, flax or both" is covered by 6505.90.15 through 6505.90.25; "Of wool" is covered by 6505.90.30 through 6505.90.40; "Of man-made fibers" is covered by 6505.90.50 through 6505.90.80; and "Other" is covered by 6505.90.90.

The Explanatory Notes (EN)<sup>1</sup> to the Harmonized Commodity Description and Coding System are published by the World Customs Organization (Customs Cooperation Council). Although not legally binding, they represent the official interpretation of the tariff at the international level. The EN to 65.05, page 968, state that:

"This heading covers hats and headgear (whether or not lined or trimmed) made directly by knitting or crocheting (whether or not fulled or felted), or made up from lace, felt or other textile fabric in the piece, whether or not the fabric has been oiled, waxed, rubberized or otherwise impregnated or coated."

This means that under this heading knit or crocheted hats and headgear can be made of any material; if not knitted or crocheted they must be of textile fabric.

The heading "includes hat-shapes made by sewing but **not** hat-shapes or headgear made by sewing or otherwise assembling plaits or strips (**heading 65.04**). (See the EN to 65.02 and 65.04 for a good explanation regarding this exclusion). The EN to 65.05, state the heading includes:

(1) Hats, whether or not trimmed with ribbons, hat pins, buckles, artificial flowers, foliage or fruit, feathers or other trimmings of any material.

Headgear of feathers or artificial flowers is **excluded (heading 65.06)**.

(2) Berets (**other than** those made directly from felt pla-teaux—**heading 65.03**), bonnets, skull-caps and the like. These are usually made directly by knitting or crocheting, and are frequently fulled (e.g., basque berets).

(3) Certain oriental headgear (e.g., fezzes). These are usually made directly by knitting or crocheting, and are frequently fulled.

(4) Peaked caps of various kinds (uniform caps, etc.).

(5) Professional and ecclesiastical headgear (mitres, birettas, mortar-boards, etc.).

(6) Headgear made up from woven fabric, lace, net fabric, etc., such as chefs' hats, nuns' head-dresses, nurses' or waitresses' caps, etc., having clearly the character of headgear.

(7) Cork or pith helmets, covered with textile fabric.

(8) Sou'westers.

(9) Hoods.

Detachable hoods for capes, cloaks, etc., presented with the garments to which they belong, are, however, **excluded** and are classified with the garments according to their constituent materials.

<sup>1</sup> Explanatory Notes © 1996 Customs Co-operation Council (formal name of the World Customs Organization). The Explanatory Notes are available in printed and electronic versions from commercial sources or The World Customs Organization, Espace Nord, rue du Marché 30, B1210 Brussels, Belgium

(10) Top hats and opera hats.

This heading also includes hair-nets, snoods and the like. These are of any material, generally of tulle or other net, knitted or crocheted fabric or of human hair.

Non-woven fabric headgear is included in this heading. Classification of hats and headgear impacts on the proper textile category designation of the merchandise.

Importers and brokers commonly enter heading 6505 products under incorrect eight-digit subheadings based on the wrong material or wrong material construction. Cotton, flax, wool and man-made fibers have their own subheadings. In addition, the subheadings for these materials require division based upon their material construction, i.e. whether knitted, crocheted or other (not knitted, primarily woven or non-woven).

This publication will also discuss a common error which occurs when man-made fiber merchandise is entered in subheadings 6505.90.50 through 6505.90.80. It will review what constitutes "Wholly or in part of braid" in subheadings 6505.90.50 and 6505.90.70.

#### HAIR-NETS

Subheading 6505.10 includes hair-nets and snoods (a bag-like hair-net worn on the back of the head or over a bun). In general, these are of net, knit or crocheted construction and can be of any material, including human hair.

#### OTHER

Subheading 6505.90 consists of four significant subheading groupings.

#### HATS AND OTHER HEADGEAR OF COTTON, FLAX OR BOTH (6505.90.15 THROUGH 6505.90.25)

Cotton hats, baseball caps, sun visors and babies' hats fall under these subheadings. To arrive at a classification under these subheadings you must determine whether the fabric is of cotton, of flax or of a combination of the two and whether the fabric from which the hats or headgear is made is knitted or not knitted (primarily woven).

Visors and other headgear which do not cover the crown of the head must be accurately described as there are separate statistical breakouts for this type of merchandise under subheadings 6505.90.1525 (knitted) and 6505.90.2545 (not knitted).

Statistical breakouts for babies' hats and headgear of cotton are provided for under subheadings 6505.90.1515 (knitted) and 6505.90.2030 (not knitted). The item must be sized 0 to 24 months. Toddler sizes do not fall under these numbers.

Woven cotton hats are often incorrectly classified under subheading 6505.90.2590. This error occurs because certified hand-loomed and folklore products of cotton, and headwear of cotton are grouped under the same statistical breakouts. Woven cotton hats are properly classi-

fied under subheading 6505.90.2060 which provides for "Not knitted: Certified hand-loomed and folklore products; *and headwear of cotton*" (emphasis added).

**HATS AND OTHER HEADGEAR OF WOOL  
(6505.90.30 THROUGH 6505.90.40)**

Wool hats, baseball caps, sun visors and babies' hats fall under these subheadings. To arrive at a classification under these subheadings you must determine whether the fabric from which the hats or headgear are made is of wool and whether it is knitted or crocheted or made up from knitted or crocheted fabric, or of other construction (primarily woven).

Visors and other headgear which do not cover the crown of the head must be accurately described as there are separate statistical breakouts for this type of merchandise under subheadings 6505.90.3045 (knitted or crocheted or made up from knitted or crocheted fabric) and 6505.90.4045 (other).

Statistical breakouts for babies' hats and headgear of wool are provided for under subheadings 6505.90.3030 (knitted or crocheted or made up from knitted or crocheted fabric) and 6505.90.4030 (other). The item must be sized 0 to 24 months. Toddler sizes do not fall under these numbers.

**HATS AND OTHER HEADGEAR OF MAN-MADE FIBERS  
(6505.90.50 THROUGH 6505.90.80)**

Man-made fiber hats, baseball caps, sun visors, disposable headgear and babies' hats fall under these subheadings. To arrive at a classification under these subheadings you must determine whether the fabric is of man-made fibers and whether the fabric from which the hats or headgear are made is knitted or crocheted or made up from knitted or crocheted fabric, or of other construction (primarily woven or non-woven).

Visors and other headgear which do not cover the crown of the head must be accurately described as there are separate statistical breakouts for this type of merchandise under subheadings 6505.90.5045 (knitted or crocheted, wholly or in part of braid) 6505.90.6045 (knitted or crocheted, not in part of braid), 6505.90.7045 (other, wholly or in part of braid) and 6505.90.8050 (other, not in part of braid).

Statistical breakouts for babies' hats and headgear of man-made fibers are provided for under subheadings 6505.90.5030 (knitted or crocheted, wholly or in part of braid), 6505.90.6030 (knitted or crocheted, not in part of braid), 6506.90.7030 (other, wholly or in part of braid) and 6505.90.8045 (other, not in part of braid). The item must be sized 0 to 24 months. Toddler sizes do not fall under these numbers.

Note two very specific statistical breakouts. Man-made fiber hats or headgear, knitted or crocheted or made up from knitted or crocheted fabric, not in part of braid, not for babies, containing 23% or more by weight of wool or fine animal hair are classified under subheading 6505.90.6040. Man-made fiber hats or headgear, not in part of braid, that are non-woven disposable headgear without peaks or visors are classified under subheading 6505.90.8015.

### WHOLLY OR IN PART OF BRAID

Within the subheadings for hats and headgear of man-made fibers are provisions for items "Wholly or in part of braid." Customs has found that much of the misclassification within heading 6505 is the result of misclassification under the "Wholly or in part of braid" subheadings 6505.90.50 and 6505.90.70. A full and detailed explanation of this term is necessary to facilitate proper classification under these provisions.

When merchandise is classifiable in Heading 6505 as a hat of man-made fibers, we must determine whether it is classifiable as "in part of braid." General Note 19 of the HTSUS provides in pertinent part the following:

19. *Definitions.* For the purposes of the tariff schedule, unless the context otherwise requires—

\* \* \* \* \*

(e) the terms "*wholly of*", "*in part of*", and "*containing*", when used between the description of an article and a material (e.g., "woven fabrics, *wholly of* cotton"), have the following meanings:

(i) "*wholly of*" means that the goods are, except for negligible or insignificant quantities of some other material or materials, composed completely of the named material;

(ii) "*in part of*" or "*containing*" mean that the goods contain a significant quantity of the named material.

With regard to the application of the quantitative concepts specified above, it is intended that the *de minimis* rule apply.

*De minimis* means that an ingredient or component of an article may be ignored for classification purposes depending upon "whether or not the amount used has really changed or affected the nature of the article and, of course, its salability" as stated by the court in *Varsity Watch Company v. United States*, 34 CCPA 155, C.A.D. 359 (1947). The Customs Service has determined, in applying *de minimis* to the term "in part of braid," that if the quantity of braid in the sample submitted serves a useful purpose or affects the nature of the article or increases the salability of the article, it is considered to be in part of braid. (See ruling HQ 089076 dated July 31, 1991). Hats "in part of braid" can be divided into two categories: those where the braid serves a useful purpose, and those where the braid affects the nature of the article.

### BRAID SERVES A USEFUL PURPOSE

Braid commonly serves a useful purpose when it affects the shape of the article or helps hold the item to the head. This type of braid can be found on many types of hats and headgear.

A knit hat with a hidden band of braided elastic in its interior was considered to be in part of braid. The opening of the head was approximately 3 inches in its unstretched condition. The purpose of the braided elastic was functional, it retained and reinforced the stretch and recov-

ery of the knit fabric and therefore helped to maintain the shape and fit of the hat as a whole. (See ruling NY A82685 dated May 15, 1996).

A woven baseball style cap with an adjustable drawstring consisting of braided cord at the rear of the cap was in part of braid. The braid functioned to adjust the size of the cap to the wearer. (See ruling NY A88595 dated October 24, 1996).

Woven and knitted slumber caps, coiffure bonnets and shower caps with a braided elastic sewn around the inside edge which helped hold the articles on the head were considered in part of braid. (See ruling DD 841800 dated July 12, 1989).

A knitted man-made fiber mosquito head net with braided elastic at the base to keep it secure was considered in part of braid. (See rulings NY 835608 dated February 1, 1989, HQ 950365 dated January 16, 1992).

A knit hat with a thin elasticized braid inserted at the lower edge was determined to be not in part of braid because it was small, could not be seen and did not affect the nature of the article. (See ruling HQ 089076 dated July 31, 1991).

A knit beret containing braided elastic yarn which loosely laid at the cuff was not in part of braid. The rib knit cuff performed natural elasticity and required no elastics. (See ruling NY 848709 dated January 12, 1990).

An acrylic knit infants' hat with an elastic braid in the welt running through the inside of the hat approximately 1 inch from the bottom was not in part of braid. The amount of braid was small, it was concealed and the hat could be worn without it. The fabric was constructed to stretch and recover its original shape without the additional elastic braid. (See ruling HQ 950792 dated March 31, 1992).

An acrylic knit hat with an intertwining of elastic braid throughout the hat was not in part of braid. The braid did not impart any additional elasticity which was not already imparted by the acrylic knitted material. (See ruling HQ 952956 dated February 23, 1993).

#### **BRAID AFFECTS THE NATURE OF THE ARTICLE**

Braid commonly affects the nature of the article when it is used for decorative purposes. This type of braid can be found on many types of hats, but is commonly found in baseball style caps where the braid is between the peak and the crown.

On baseball style caps, the braid is usually approximately 9 inches long and can vary in width. Headquarters rulings have held that a braid as narrow as 3/16 and 1/8 inch wide is considered in part of braid because the amount of the braid was considered significant. (See rulings HQ 088438 dated January 14, 1991, HQ 953465 dated April 21, 1993). However, a braid 1/16 wide was not considered in part of braid because the braid was not readily visible nor did it appear to serve any functional purpose. (See rulings HQ 960026 dated November 12, 1997, NY B89499 dated September 29, 1997).

A knit hat with a pom-pom attached to it by a small length of braid was not considered in part of braid because the piece of braid was small and did not affect the nature or salability of the article. (See ruling HQ 950792 dated March 31, 1992).

#### **OTHER HATS AND OTHER HEADGEAR (6505.90.90)**

Hats and other headgear classified under heading 6505 (but not hair-nets or hats or other headgear made of cotton, flax, wool or man-made fibers) fall under this subheading. Fabric construction is not an issue in this subheading which includes:

- 6505.90.9030 Silk hats and headgear, containing 70% or more by weight of silk or silk waste.
- 6505.90.9045 Hats and headgear, of fine animal hair of alpaca, llama, vicuna, camel, yak, Angora, Tibetan, Kashmir or similar goats, rabbit (including Angora rabbit), hare, beaver, nutria or muskrat.
- 6505.90.9050 Paper yarn hats and headgear. Under the HTSUS, paper yarns are considered to be textile material. They are usually knitted or crocheted.
- 6505.90.9075 Raffia hats and headgear. These are usually knitted or crocheted.
- 6505.90.9085 Silk hats and headgear not classified under 6505.90.9030.  
Seagrass hats and headgear.  
Vegetable fiber hats and headgear.

#### **THE IMPORTER'S RESPONSIBILITIES**

Since the enactment of the Customs Modernization Act in December, 1993, the legal burden of correctly classifying and valuing merchandise has shifted from the Customs Service to the importer, who must use reasonable care in carrying out these responsibilities.

When a hat or other headgear is imported, the importer should be aware of the composition of the component material or materials (i.e. the fiber content), the construction of the materials (knit, crocheted, woven, non-woven, etc.) and should obtain specific information from the foreign supplier regarding each component material.

The importer should also be aware of the distinctions made in 6505 among cotton, wool, man-made fibers and other materials as well as knit, crocheted and other constructions (primarily woven and non-woven construction). If the item is of man-made materials, the importer should be aware of whether it contains braid. If so, the importer should then ascertain if the braid serves a useful purpose or affects the nature of the article or increases the salability of the article. If there are any doubts regarding this information, the importer should contact Customs.

The importer is also responsible for insuring that the entered value is determined in accordance with the Customs valuation law. (See "ADDITIONAL INFORMATION" below)

A binding ruling regarding the classification of a product may be requested prior to importation. See Part 177 of the Customs Regulations (19 CFR 177). A ruling request should include a sample of the item as well as information on its use and precise composition and construction. Each material which comprises the product should be identified. For sets, or composite goods, a breakdown indicating the quantity, weight, value and role of each component should be submitted with the ruling request. Requests for tariff classification rulings should be addressed to the Director, National Commodity Specialist Division, U.S. Customs Service, Attn: Classification Ruling Requests, 6 World Trade Center, New York, New York 10048.

#### INVOICING REQUIREMENTS

In accordance with section 141.86 of the Customs Regulations, "Contents of invoices and general requirements," (19 CFR 141.86), invoices should describe the precise nature and use of the merchandise. Each component material of the article should be identified as well as its construction (knit, woven, etc.). If possible the invoice should provide a complete breakdown by weight and a complete breakdown by value, indicating the percentage of the article (by weight and value) represented by each component.

The style name and brand name of the article is important and would be helpful if indicated on the invoice along with the marks, numbers and symbols which represent this merchandise. In addition, an invoice should provide information on the unit value, the total value of the shipment, quantity and terms of sale. When a product is a set, the invoice should not simply indicate the value of the entire set but should identify each article within the set and provide the unit value for each of these items. Please see *"What Every Member of the Trade Community Should Know About: Customs Value"* for information on determining value for Customs purposes. This publication is available on the Customs Electronic Bulletin Board and the Customs Internet Web site, both of which are described below.

What Every Member of the  
Trade Community Should Know About:

# *Customs Enforcement of Intellectual Property Rights*



A Basic Level  
Informed Compliance Publication of the  
U.S. Customs Service

June, 1999

**NOTICE:**

This publication was prepared for the guidance and information of the trade community. It reflects the Customs Service's position or interpretation of the applicable laws or regulations as of the date of publication, as shown on the front cover. It does not in any way replace or supersede the laws or regulations. Only the latest official version of the laws or regulations is authoritative.

*Publication History*

*First Issued: June, 1999*

**PRINTING NOTE:**

This publication was designed for electronic distribution via the Customs Electronic Bulletin Board and Customs Internet World Wide Web site (<http://www.customs.gov>) and is being distributed in a variety of formats. It was originally set up in WordPerfect® 8 using an HP Laser-jet 5P printer driver (or Lexmark Optra N printer driver for two sided printing). Pagination and margins in downloaded versions may vary depending on the wordprocessor and/or printer used. If you wish to maintain all the original settings, you may wish to download the .pdf version which can then be printed using the freely available Adobe Acrobat Reader®.

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Intellectual Property Rights Branch, International Trade Compliance Division, Office of Regulations and Rulings has prepared this publication on ***Customs Enforcement of Intellectual Property Rights*** as part of a series of informed compliance publications advising the trade community of changes in Customs procedures as a result of the Mod Act and other legislation. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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## U.S. CUSTOMS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

### I. BACKGROUND AND INTRODUCTION

The importance of protecting intellectual property rights has received heightened recognition through the increase in world trade. Some estimates indicate that in 1996 business in the United States lost more than \$200 billion worldwide due to illegal counterfeiting. Between five to eight percent of all goods and services sold world wide are estimated to be counterfeit. The United States Customs Service, established in 1789, is a law enforcement agency of the Department of the Treasury and is vested with the powers of search, seizure and arrest. In an effort to combat the flow of infringing goods into the United States, the United States Customs Service has made a concerted effort to detect infringing merchandise entering the United States and to seize such goods. This mission is accomplished through the cooperation of various disciplines within Customs in targeting infringing merchandise and taking enforcement actions. By statutory authority, Customs has been granted the power to decide substantive issues of trademark and copyright infringement. In Fiscal Year 1998, United States Customs made 3,409 seizures involving intellectual property rights violations, having a domestic value of \$ 75,896,505.

Within the United States legal system both the Customs Service and courts of law are competent legal authorities which are provided the power to make determinations of infringement. As an administrative agency with law enforcement powers, the United States Customs Service has the legal authority to make infringement determinations regarding trademarks and copyrights, pursuant to the Tariff Act of 1930, the Lanham Act of 1946 and the Copyright Act of 1976. Customs, as an administrative agency, is without power to make determinations of patent infringement. Customs issues reasoned written decisions on substantive issues of trademark and copyright infringement. Additionally, Customs has been granted the law enforcement powers of search, seizure and arrest. The United States Customs Service is also charged with enforcing criminal laws pertaining to trademark and copyright infringement.

### II. INTELLECTUAL PROPERTY RIGHTS

#### A. WHAT ARE INTELLECTUAL PROPERTY RIGHTS?

An intellectual property right is a descriptive term covering a vast area of inventive, artistic, descriptive and novel works indicating ownership of a particular right. Under United States law, a **trademark** is defined as a word, name, symbol, device, color or combination thereof used to distinguish goods, which identifies origin and ownership. Property rights in a trademark are created by adopting and using a distinct mark. U.S. Customs protects trademarks which are registered with the United States Patent and Trademark Office. Registration of a trademark covers a specific class or classes of goods, for a period of ten years and is renewable. Examples of well known trademarks which have been

registered with the United States Patent and Trademark Office and recorded with Customs are depicted below.



Reproduced with the permission of NIKE

A **trade name** is the name under which a company does business. Trade names are not registered with the Patent and Trademark Office but may be recorded with Customs if the name has been used to identify a trade or manufacturer for at least six months. The recordation of trade names is published in the *Customs Bulletin* to provide notice to the public and interested parties an opportunity to oppose the recordation.

A **copyright** protects the tangible expression of an idea and gives the copyright owner the right to prevent the unauthorized use of his work. Under United States law, pursuant to 17 U.S.C. § 102(a), a copyright may exist in: literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, motion pictures and other audio visual works, sound recordings, and architectural works. A copyright is registered with the United States Copyright Office for either the life of the author plus 50 years or for 75 or 100 years depending on the authorship of the work and its creation date. United States Customs protection of copyrighted works is primarily concentrated on works which have been recorded with the agency. Non-expired claims to copyright which are registered with the Copyright Office may be recorded with Customs for a fee of \$190. Claims to copyrights entitled to protection under the Berne Convention for the Protection of Literary and Artistic Works, as amended, may also be eligible for recordation. An example of work which has been registered with the U.S. Copyright Office and recorded with Customs is depicted below.



© Disney Enterprises, Inc.

**Patents** in the United States are registered with the Patent and Trademark Office for any useful process, machine, manufacture or composition of matter or any new and useful improvement thereof. Three types of patents are issued in the United States for a period ranging from 14 to 20 years.

#### **B. WHAT IS INFRINGEMENT OF AN INTELLECTUAL PROPERTY RIGHT?**

Infringement of an intellectual property right involves the use of a protected right without the authorization of the right owner. U.S. Customs is empowered to make substantive decisions pertaining to trademark and copyright infringement.

##### **TRADEMARK INFRINGEMENT**

As a competent authority to decide substantive issues of trademark infringement, the United States Customs Service makes determinations as to trademark infringement. Customs regulations provide for three levels of infringement: counterfeit, confusingly similar or "gray market" (diverted goods or parallel importations).

##### ***Counterfeit***

By statute, Title 15, United States Code, section 1127 (15 U.S.C. § 1127), a counterfeit mark is defined as a spurious mark which is identical with, or substantially indistinguishable from, a registered trademark.

##### ***Confusingly Similar***

The legal standard for determining infringement where the mark is not counterfeit is "confusingly similar". Under this standard, the dispositive issue is whether the mark is likely to cause confusion or mistake or to deceive the average consumer.

##### ***Gray Market (Parallel Imports)***

"Gray market" goods are genuine goods manufactured in a foreign country, bearing a United States trademark and imported without the consent of the United States trademark owner.

##### **COPYRIGHT INFRINGEMENT**

The determination of copyright piracy is complex. The basic test is unauthorized substantial similarity of a material protected part of the copyright. In order to establish copyright infringement, copyright ownership and copying must be proven. With regard to establishing ownership of copyrights, pursuant to 17 U.S.C. § 410(c), a copyright registration evinces ownership of the copyright. Proof of copying may be established through direct evidence of copying or through circumstantial evidence. Direct evidence of copying is rare. Circumstantial evidence of copying requires a showing of access to the work and substantial similarity to the protected work.

##### **PATENT INFRINGEMENT**

United States Customs Service enforcement actions relating to patents are limited. Customs is without legal authority to determine patent

infringement. With regard to patents, Customs enforces **exclusion orders** issued by the United States International Trade Commission (ITC) and conducts **patent surveys**. Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) provides relief to United States industries which have established the existence of unfair trade practices in importing. ITC exclusion orders are issued, among other things, for findings of infringement of a patent. Customs has authority to exclude from entry goods infringing a patent pursuant to an ITC exclusion order. Pursuant to 19 CFR 12.39(c), seizure is permitted under an ITC seizure order where the owner, importer or consignee has previously attempted to import the article, the article was previously denied entry, and written notice was provided to the importer that further attempt to enter the article would result in seizure and forfeiture.

Patent surveys are conducted by Customs to detect importations which appear to infringe a registered patent. Such surveys are conducted on behalf of and for the information of only the patent owner. Patent surveys are conducted for a fee ranging from \$1,000 to \$2,000 for a period of two to six months. Customs does not detain any shipment under a survey but may take samples to determine whether the merchandise might infringe. If possible infringing merchandise is detected, Customs provides the name and address of the importer to the patent owner.

### III. ROLE OF INTELLECTUAL PROPERTY RIGHT OWNER

#### A. WHAT INFORMATION MAY AN IPR OWNER PROVIDE CUSTOMS?

U.S. Customs works in close cooperation with intellectual property rights owners. Subsequent to the federal registration of a trademark, a trademark may be recorded with Customs. Recordation with Customs is effective for the term of registration or the remaining period. The recordation is entered into the Intellectual Property Rights module database, a centralized record keeping system, and is accessible by Customs field offices. A portion of the information pertaining to the recordation of copyrights and trademarks and exclusion orders is made available to the public through the Customs Electronic Bulletin Board (CEBB), which may be accessed through U.S. Customs website on the internet (<http://www.customs.gov>). The recordation fee is currently \$190.

Copyright owners obtain Customs protection by submitting certified copies of their copyright registration certificate issued by the United States Copyright Office in addition to information required under the Customs regulations. Recordation with Customs is effective for a 20 year term or the remaining period of registration. A copyright recordation may be renewed where the registration term exceeds the original 20 year recordation term. Berne Convention protected copyrights may be recorded with Customs upon a written submission.

Trademark and copyright owners may provide the following information along with their application:

- the name and business address of the importer and/or consignee of the allegedly infringing articles;
- a sufficiently detailed description of the suspect goods to make them readily recognizable by Customs, including a sample of the infringing article or a photographic or other likeness reproduced on paper;
- the country of origin of the shipment and any countries through which the suspect goods are transhipped;
- the country or countries of manufacture of the allegedly infringing merchandise;
- the name and principal business address of each foreign person or business entity involved in the manufacture and/or distribution of suspect article;
- the mode of transportation and the identity of the transporters of the allegedly infringing good;
- the ports where it is anticipated the suspect articles will be presented to Customs;
- the anticipated date of presentation to Customs;
- the Harmonized Tariff Schedule designation of the suspect goods and;
- any additional evidence relating to the importation of the suspect goods.

#### **B. WHAT INFORMATION WILL CUSTOMS PROVIDE TO AN IPR OWNER?**

Pursuant to the Customs regulations, an intellectual property right owner will be provided certain information where merchandise is detained or seized as infringing a tradename or registered copyright or trademark.

Where merchandise is seized as bearing a counterfeit mark or is seized as clearly piratical of a registered copyright, Customs will disclose to the intellectual property right owner the following information, if available, within 30 business days of the date of the seizure notice:

- date of importation
- port of entry
- description of merchandise
- quantity involved
- name and address of manufacturer
- country of origin of merchandise
- name and address of exporter and
- name and address of importer

At any time following seizure of the merchandise, Customs may also provide a sample of the merchandise to the intellectual property right owner. To obtain a sample, the intellectual property right owner must furnish Customs a bond in the form and amount specified by the port

director, conditioned to hold harmless the United States, its officers and employees, and the importer or owner of the imported merchandise harmless from any loss or damage resulting from the furnishing of a sample by Customs to the intellectual property right owner.

Where merchandise is detained as bearing a confusingly similar mark, as a gray market good or as possibly piratical of a registered and recorded copyright, the intellectual property owner will be provided the following information, if available, within 30 business days of the date of the detention:

- date of importation
- port of entry
- description of merchandise
- quantity involved and
- country of origin of the merchandise

At any time following presentation of the merchandise for Customs examination but prior to seizure, Customs may provide a sample of the merchandise to the intellectual property right owner. The intellectual property right owner is required to file a bond with Customs in order to receive a sample.

#### **C. HOW IS CUSTOMS ENFORCEMENT OF IPR INITIATED?**

United States Customs on its own accord may initiate enforcement actions to detain or seize infringing merchandise. Through the combined efforts of the many disciplines within Customs and other government agencies, Customs may obtain information leading to the initiation and commencement of an enforcement action by a Customs officer. Where a trademark or copyright is federally registered with either the Patent and Trademark Office or the United States Copyright Office, Customs may take action even if the trademark or copyright has not been recorded with Customs. Customs may initiate enforcement action through the issuance of an alert to field offices throughout the country. These alerts are used as targeting mechanisms to alert Customs field offices to the possible importation of infringing goods. In addition to enforcement actions taken on its own accord, Customs may take a second type of enforcement action through information provided by the right owner in recording the trademark or copyright with Customs.

An invaluable resource in the enforcement of intellectual property rights is the centralized recordation system. This system is the tool by which information is distributed service-wide. The Automated Commercial System Intellectual Property Rights (IPR) Module was designed to make it simpler for import specialists, inspectors and other Customs personnel to quickly find information related to intellectual property as it pertains to imported merchandise. All Customs personnel who have a computer properly connected may access the system. The IPR module is an annotated electronic index to recordings of intellectual property currently on file with the United States Customs Service. Through the system's keyword and other search capabilities,

import specialists, inspectors, agents and Customs attorneys can quickly locate basic intellectual property rights information.

The IPR module contains information on trademarks, copyrights, trade names, International Trade Commission exclusion orders, and patent surveys. The IPR module also incorporates imaging technology. Photographs, drawings and graphics convey the nature of the intellectual property more effectively than words. With regard to copyrights and trademarks, information contained in the IPR module includes: name of IPR owner, contact person, type of IPR, product, description, owner name, places of manufacture, licensees, name/address, registration number, recordation number, expiration date, and any images.

Customs may also act upon application of the copyright or trademark right holder with regard to a specific or single shipment. A right holder may request Customs to seize merchandise relating to specific shipments which the right holder suspects will be imported into the United States and which it believes infringes its trademark or copyright. If at the time of recordation or at any point during the term of recordation the trademark owner or the copyright owner has knowledge of infringing importations, the right owner may upon application request that Customs seize merchandise bearing infringing marks or piratical merchandise.

#### **IV. CUSTOMS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

A right holder in the United States has available two avenues for enforcing its intellectual property right. A right holder may seek private redress and file for an injunction or a claim for monetary damages in a court of law, which may enjoin a purported infringer from importing merchandise which infringes the intellectual property right. As stated above, however, a right holder may also seek public redress by petitioning the United States Customs Service to protect its property rights through the seizure of merchandise determined to infringe a federally registered trademark or copyright. As a consequence, there is often an interconnection between these two competent legal authorities, the courts and Customs. A right holder may present to Customs an injunction obtained from a court of law as evidence of infringement, prohibiting a particular party from importing infringing merchandise. Here, too, however, Customs enforcement covers trademarks and copyright but not patents.

#### **A. HOW DOES CUSTOMS RESPOND TO TRADEMARK INFRINGEMENT?**

The manner of Customs protection of a trademark right is determined by whether the mark has been recorded with Customs.

##### ***Counterfeit***

Where imported merchandise bears a mark which is counterfeit of a registered and recorded trademark, Customs may seize the merchandise as bearing a counterfeit mark pursuant to 19 U.S.C. § 1526(e) and provide the importer with notice of the seizure. Customs officers inform the right holder of the seizure of the goods bearing the infringing marks

pursuant to Customs regulations. Although Customs focuses on protection of trademarks which have been recorded with Customs, protection for federally registered trademarks which have not been recorded with Customs may also be provided. Where merchandise bears a mark which is determined to be counterfeit of a registered but unrecorded trademark, Customs may seize such merchandise pursuant to 19 U.S.C. § 1595a(c)(2)(C) (section 596 of the Tariff Act) for violation of 18 U.S.C. § 2320, involving trafficking in counterfeit goods.

Merchandise which is seized and forfeited as bearing a counterfeit mark must be destroyed, unless the trademark owner provides written consent and the merchandise is not unsafe or a health hazard. Where consent is provided by the trademark owner, after obliteration of the mark where feasible, the merchandise may be delivered to any Federal, State or local government agency, donated to a charitable institution or sold at public auction. In addition to the seizure of merchandise bearing counterfeit marks, pursuant to 19 U.S.C. § 1526(f), Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark.

### ***Confusingly Similar***

Merchandise bearing marks which are "confusingly similar" to registered and recorded trademarks is initially subject to detention. Customs notifies the importer in writing of the detention and provides the importer with the opportunity to show that he has obtained permission from the right holder, that a personal exemption applies, or that if there are no prior incidents, he will obliterate the infringing mark. The importer has 30 days to obtain release of the merchandise. If the merchandise is not released within this time period, the merchandise is seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for violation of 15 U.S.C. § 1124. Merchandise bearing a mark which is confusingly similar to a trademark registered with the United States Patent and Trademark Office but not recorded with Customs, will, under current Customs policy, not be detained or seized.

### ***Gray Market***

Goods bearing a trademark which receives gray market protection are initially subject to detention. Customs provides gray market protection only to trademarks which have been recorded with Customs and where the U.S. trademark owner does not own the foreign trademark and no common ownership or control exists between the U.S. trademark owner and a foreign trademark owner. The importer is notified in writing that the goods have been detained as gray market goods. The importer is provided 30 days to obtain the consent of the U.S. trademark owner to import the goods or to remove the infringing trademarks. The importer has 30 days in which to obtain the release of the merchandise. If the merchandise is not released within this time period, the goods are seized pursuant to 19 U.S.C. § 1526(a). The importation of Gray market

merchandise fitting the above descriptions is unlawful pursuant to 19 U.S.C. § 1526(a) and subject to seizure under 1526(b).

On February 24, 1999, regulations were published in the Federal Register relating to the implementation of the D.C. Court of Appeals decision in *Lever Bros. Co. v. United States*, 981 F2d 1330 (D.C. Cir. 1993). Prior to the *Lever Bros.* decision, gray market protection was not afforded trademarks where the foreign and U.S. trademark owners were subject to common ownership and control. The D.C. Court of Appeals determined that where the imported goods are physically and materially different from the goods authorized by the U.S. trademark owner, Customs may not exclude the trademark from receiving gray market protection on this basis. The Court of Appeals found that section 42 of the Lanham Act precluded the application of the affiliate exception where the imported goods were physically and materially different goods and that Customs should provide gray market protection. Section 42 of the Lanham Act protects against consumer deception or confusion about an article's origin or sponsorship.

The new regulations in Part 133 of the Customs Regulations provide that upon application of the trademark owner, even in affiliate exception cases, Customs will consider restricting the importation of physically and materially different products bearing genuine trademarks which are not authorized by the U.S. trademark owner. Under the new regulations, Customs will determine whether physical, material differences exist. This determination may include but is not limited to:

- composition of both the authorized and gray market products (including chemical composition),
- formulation,
- product construction,
- structure or composite product components, of both the authorized and gray market product,
- performance and/or operational characteristics of both the authorized and gray market product,
- differences resulting from legal or regulatory requirements, certification etc.,

and other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

The new regulations provide that Customs will publish in the *Customs Bulletin* a notice listing any trademarks for which *Lever-rule* protection has been requested and the specific products for which gray market protection for physically and materially different products has been requested. Customs will examine the requests before issuing a determination on whether *Lever-rule* protection is granted. For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination. If protection is granted, Customs will publish in the *Customs Bulletin* a

notice that a trademark will receive Lever-rule protection with regard to a specific product.

The new regulation provides that the restriction to importation will not apply where a label is placed on the product informing the ultimate purchaser in the United States that the "product is not the product authorized by the United States trademark owner for importation and is physically and materially different." Under the new regulation, where this label is placed on goods which would be excluded under *Lever-rule* protection, the goods could then be entered into the U.S.

## **B. HOW DOES CUSTOMS RESPOND TO COPYRIGHT INFRINGEMENT?**

### ***Clearly Piratical***

In cases where the United States Customs Service is convinced that imported merchandise infringes a federally registered copyright and the copyright has been recorded with Customs, pursuant to statutory and regulatory authority, 17 U.S.C. § 602/603 and 19 CFR 133.42, the merchandise will be seized. Where a federally registered copyright has not been recorded with Customs and a determination is made that the merchandise is clearly piratical, the merchandise is subject to seizure pursuant to 19 U.S.C. § 1595a(c)(2)(C) for violation of 17 U.S.C. § 506/509.

### ***Possibly Piratical***

As a competent authority, Customs may detain imported merchandise, pursuant to statutory and regulatory authority, where an imported item, when compared to a protected work, raises a suspicion of substantial similarity. If the appropriate Customs officer has any reason to believe that an imported article may be an infringing copy or phonorecord of a recorded copyrighted work, the concerned port director will withhold delivery, notify the importer of his action and advise the importer that if the facts so warrant he may file a statement denying that the article is in fact an infringing copy. The importer is provided the opportunity to either admit or deny that copyright infringement exists and has 30 days to respond to the Customs notice of detention. In the absence of a denial, the merchandise will be considered infringing. Where the importer denies infringement, Customs notifies the copyright owner and provides the party with a sample of the imported merchandise.

If the copyright owner believes that the merchandise infringes its copyright, the copyright owner must file a written request that Customs exclude the merchandise and also deposit a bond within 30 days of the date of the notice, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event that Customs determines that the article is not an infringing copy. The amount of the bond is determined by the Port Director (often in the amount of 110% of the dutiable value of the goods).

Where the copyright owner exercises its right to file a written request to exclude the merchandise and the bond is posted, the importer and copyright owner will be afforded 30 days in which to submit additional evidence to the Intellectual Property Rights Branch at Headquarters. Briefs are exchanged between the copyright owner and the importer. Each party may file a response to the arguments raised by the opposing party. A determination is made as to whether the goods are piratical. Where Customs determines the goods are piratical, the goods are seized and forfeited and the bond is returned to the copyright owner. Where Customs determines that the goods are not piratical, the goods are released to the importer and the bond is turned over to the importer.

Merchandise which is initially determined to be possibly piratical of a federally registered copyright which has been recorded with Customs is subject to seizure pursuant to 17 U.S.C. § 603, if ruled to be infringing. Under Customs policy, merchandise which is initially determined to be possibly piratical of a registered copyright which has not been recorded with Customs is not subject to detention or seizure. Articles which have been determined to infringe a copyright will be destroyed pursuant to statutory and regulatory authority, 17 U.S.C. § 603(c) and 19 CFR 133.52(b).

### C. WHAT ROLE DO VARIOUS OFFICES WITHIN CUSTOMS PLAY?

Through the coordination of various disciplines within Customs and with other agencies, Customs enforces the rights of intellectual property owners. The Office of Field Operations is responsible for the inspection of cargo, baggage, vehicles, vessels and aircraft arriving in the United States and also export control activities. Front line inspectors work in cooperation with import specialists to target shipments which may infringe federally registered trademarks and copyrights. In inspecting merchandise, Customs also coordinates with other agencies, such as the Consumer Product Safety Commission and the Food and Drug Administration. Additionally, field offices frequently communicate with the right holder in enforcing the particular trademark or copyright, or in the case of the enforcement of an exclusion order, the patent owner.

Laboratories and Scientific Services office provides scientific and technical information at Headquarters and seven field laboratories across the United States. Among other functions, these laboratories examine merchandise for copyright, patent, and trademark infringement violations. The attorneys in the Intellectual Property Rights Branch of the Office of Regulations and Rulings also play a supportive role in making substantive legal determinations on infringement issues.

The Office of Strategic Trade pinpoints importing trends, provides selectivity and targeting criteria, and compiles statistics on numerous issues, including seizures based on violations of intellectual property rights. The Office of International Affairs is vested with the responsibility of coordinating training and technical assistance to other countries throughout the world. The Office of Investigations performs investiga-

tions of all violations of Customs and related laws and regulations, both domestic and foreign, including violations of intellectual property rights. In instances involving substantial evidence, referrals are made by the Office of Investigations to the United States Attorney for possible criminal prosecution. The Office of Chief Counsel provides legal advice to Customs officers and litigation support in civil and criminal cases.

## **V. IMPORTERS AND INTELLECTUAL PROPERTY RIGHTS**

### **A. HOW MAY AN IMPORTER DETERMINE WHETHER GOODS ARE NON-INFRINGEMENT PRIOR TO IMPORTATION?**

As a competent authority to decide substantive issues of trademark and copyright infringement, Customs issues reasoned, written rulings and decisions and makes findings of fact and conclusions of law. Pursuant to the Customs regulations, Title 19, U.S. Code of Federal Regulations, section 177.1 (19 CFR 177.1), it is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of the transaction prior to its consummation.

For this reason, the Customs Service gives full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information. Within the context of property interests in trademark and copyright, the Intellectual Property Rights Branch at Customs Headquarters will, upon written request by an importer or interested party, issue rulings on prospective importations, making determinations as to the infringement of any relevant trademarks or copyrights. The ruling letter represents the official position of the Customs Service with respect to the particular transaction and the issue of infringement and is binding on all Customs Service personnel. These rulings are transparent and made available to the public via our Internet website (see below) and are available for purchase from commercial sources on CD ROM. If a federal court of law issues a relevant opinion to the contrary, that decision will take precedence over Customs.

The United States Customs Service also provides the entire trade community with trade related information through the Customs Electronic Bulletin Board (CEBB). The CEEB is accessed through the Customs website at <http://www.customs.gov>. The CEEB includes trademarks and copyrights recorded with Customs as well as International Trade Commission exclusion orders enforced by Customs. Each recordation file may be searched by a keyword. The CEEB users include importers, brokers, lawyers, consultants and shippers.

### **B. ONCE THE GOODS ARE SEIZED WHAT RECOURSE DOES AN IMPORTER WITH SEIZED GOODS HAVE?**

Where goods are seized for trademark or copyright infringement, a seizure notice will be issued to the importer, who may petition for ad-

ministrative relief or may elect to bring suit to recover the merchandise in federal district court. Where Customs has seized merchandise, pursuant to the Customs regulations, 19 CFR 162.31(a), a written notice for liability of the forfeiture is issued to each party that the facts of the record indicate has an interest in the seized property. The notice informs any interested party in a case involving the forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred to the United States attorney, the prosecutor for the United States government, for forfeiture proceedings. An interested party elects whether to initially pursue remission of the forfeiture through administrative proceedings or to directly file in U.S. federal court.

What Every Member of the  
Trade Community Should Know About:

# *Classification of Children's Apparel*



An Advanced Level  
Informed Compliance Publication of the  
U.S. Customs Service

June, 1999

**NOTICE:**

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

*Publication History**First Issued: June, 1999***PRINTING NOTE:**

This publication was designed for electronic distribution via the Customs Electronic Bulletin Board and Customs World Wide Web site (<http://www.customs.gov>) and is being distributed in a variety of formats. It was originally set up in WordPerfect® 8 using an HP Laserjet 5P printer driver (or Lexmark Optra N printer driver for two sided printing). Pagination and margins in downloaded versions may vary depending upon which word processor or printer you use. If you wish to maintain the original settings, you may wish to download the .pdf version, which can then be printed using the freely available Adobe Acrobat Reader®.

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*," which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on such topics as value, classification, entry procedures, country-of-origin determinations, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Textiles Branch, National Commodity Specialist Division, Office of Regulations and Rulings has prepared this publication on *Classification of Children's Apparel* as part of a series of informed compliance publications regarding the proper classification of merchandise. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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## INTRODUCTION

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs Service. In almost all cases, the goods are required to be "entered," that is, declared to the Customs Service, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs Service. As part of the entry process, goods must be "classified" (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use "reasonable care" to "enter," "classify" and "value" the goods and provide any other information necessary to enable the Customs Service to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Classifying goods is important not only for duty purposes, but also to determine whether the goods are subject to quotas, restraints, embargoes or other restrictions. The act of classifying goods is complex and requires an importer to be familiar with the *Harmonized Tariff Schedule of the United States* (HTSUS), its 99 chapters, rules of interpretation, and notes. A detailed discussion of the HTSUS may be found in a companion publication entitled, *What Every Member of the Trade Community Should Know about Tariff Classification*. Customs valuation requirements are separately discussed in a companion publication entitled, *What Every Member of the Trade Community Should Know about Customs Value*. Both of these publications are available from the Customs Electronic Bulletin Board and Customs World Wide Web pages on the Internet (see the Appendix for information on accessing these sources and obtaining additional Customs Service publications).

The purpose of this Informed Compliance publication is to advise importers, customs brokers and others of the various issues affecting the importation and tariff classification of Children's apparel. Children's textile apparel is found in Chapters 61 and 62 of the Harmonized Tariff Schedule of the United States. While classification principles for children's wear in many ways emulate classification principles applied to adult wearing apparel, certain differences in classification treatment exist between the two. Therefore, while a grounding in general apparel classification is a prerequisite for understanding children's apparel principles, it is only a beginning.

### BABIES' WEAR HEADINGS 6111 AND 6209

Chapter 61, heading 6111 and Chapter 62, heading 6209 are set aside exclusively for babies' textile apparel and apparel accessories. The controlling Chapter 61, Note 6(b) states, "[a]rticles which are, *prima facie*, classifiable both in heading 6111 and in other headings of this chapter are to be classified in heading 6111." An identical note, Chapter 62, Note 4(b), states that Chapter 62 babies' textile apparel and apparel ac-

cessories are to be classified in heading 6209. All babies' garments and clothing accessories, with the exception of wool, and non-cotton vegetable fibers, are classified in provisions that take a unique "babies'" textile category 239. Wool babies' garments and clothing accessories are classified in provisions that take a unique "babies'" textile category 439 whereas babies' garments and clothing accessories of silk and non-cotton vegetable fibers, except those containing 70 percent or more by weight of silk or silk waste, are classified in provisions that take a unique "babies'" textile category 839. To date, categories 439 and 839 are infrequently used. Heading provisions also exist which capture garments and apparel accessories containing 70 percent or more by weight of silk or silk waste. These provisions do not take a textile category number.

### BABIES' SETS

Both Chapters 61 and 62 contain Additional U.S. Note 1, which is applicable at the eight digit level and which states essentially, that for purposes of headings 6111 and 6209, the term "set" means two or more different garments of headings 6111, 6209 or 6505 (headwear), imported together, of corresponding sizes and intended to be worn together by the same person.

The key phrase is two or more different garments. Two or more different garments, and/or headwear, imported together, in the same sizes, intended to be worn together, in sizes newborn to 24 months, generally qualify as a babies' set. There are, however, notable exceptions which require mentioning. Sets consisting of a cotton dress and one or more different garments, which otherwise satisfy this term, are normally classifiable in the provision for the dress, the component which imparts the essential character. Infants' sets with dresses in fabrics other than cotton, are subject to the requirements of "infants' sets." Another notable exception involves textile apparel accessories such as booties, gloves, mittens and scarves. The presence of such articles, which in sizes over 24 months, are found in headings 6115 through 6117, and 6212 through 6217, will cause an otherwise qualifying "set" with two or more "garments" to fail the set provision and result in the items being classified in the applicable "imported as parts of sets" provision(s). For example, a packaged acrylic knit sweater, hat and booties, in corresponding sizes, is a "failed set" because of the booties, with the respective items classified in the 6111.30.5030 provision for "other babies' (knitted) garments of synthetic fibers, other, imported as parts of sets." In another example, a boy's dress-up set with woven cotton pants, shirt, jacket and bow tie, is a "failed set" because of the bow tie, with the items classified in the 6209.20.5045 provision for "other babies (not knitted) garments of cotton, other, imported as parts of sets." In a final example, a girl's set consisting of an acrylic sweater, cotton corduroy pants and acrylic knit scarf are a "failed set" because of the scarf, with the sweater and scarf classifiable in the 6111.30.5030 provision for "other (knitted) garments of synthetic fibers, other, imported as parts of sets," and the corduroy

pants classifiable in the 6209.20.5045 provision for "other (not knitted) garments, of cotton, other, imported as parts of sets."

Garments in "sets" must have the same fabric construction and chief fabric weight to qualify as a single 10 digit HTS "set". When a "set" consists of garments which are of different fabric construction, eg., one piece is knit and another is woven and/or one piece is chief weight cotton and another is chief weight synthetic fibers, then separate "other, imported as parts of sets" provisions apply. The garment's fabric construction and fiber content determine which "imported as parts of sets" provision(s) apply.

### SIZES

There are a number of commonly acknowledged size ranges in children's wear. In babies' sizes 0-24 months of age, there is 0-12 months, also called newborn sizes, and there is 12-24 months of age, also called infants' sizes. There is a "preemie" size range for babies born prematurely.

After babies, the next size range is toddlers, 2-4, also called 2-4T. Garments for boys or girls in this size range have the same numerical designations. The next range up is girls 4-6X and boys 4-7. The following range up for girls is 7-14.

In terms of knowing what size range a particular item actually falls in, the sewn in fabric label usually provides an accurate indication of the true commercial range. But if after examining the item questions about the authenticity of the reported sizing exist, certain general standards can be used to assist in the size verification process. While standardized and uniform size designations for children's apparel do not exist, a broad consensus exists as to accepted commercial size ranges, for instance, babies' apparel, sizes 0-12 months, commonly equates to a body weight of about 6-18 pounds and a height of about 18-27 inches or 48-70 centimeters, while babies sizes 12-24 months commonly equates to a body weight of about 18-28 pounds and a height of about 27-35 inches or 70-90 centimeters. This information represents generalized data and should not be construed literally.

To judge whether an item is bona fide babies' wear it is helpful to actually try the garment on an appropriately sized mannequin or child and then evaluate its appearance, silhouette and coverage as compared to that of other apparel that is properly sized. In other words, see how the article in question, literally, measures up. Benchmark the current item against clothing articles whose classification outcomes are known.

When evaluating garments, care should be taken not to mistakenly identify items for older children, such as toddlers, as babies, because of differences in quota category requirements.

### STYLING FEATURES

Garments for children in the commonly acknowledged size ranges often include styling and construction features specifically dedicated to the clothing needs of that wearer population. For example, styling fea-

tures for babies normally factor into account the distinctive body measurements of developing children as reflected in the various size ranges. As an example, babies' sizes newborn to 12 months and 12-24 months take into account babies' body proportions as they develop. Design concessions are also made to accommodate baby diapers and to provide access to diapers for changing purposes. Such garments generally exhibit styling features such as a snap crotch and legs, a front opening extending from the neck and down one or both pant legs, an oversize neck opening including, perhaps, overlapping or "lapped" fabric at the shoulders or snap closures at the shoulders. These garment features address some of the physical and lifestyle needs of growing babies.

#### GARMENT COVERAGE

In children's wear classification, often what makes an item what it is for tariff purposes is its use in the United States and the parts of the wearer's body that it covers. For example, when we speak of sunsuits, washsuits, creepers and rompers, we are referring to a class of children's garments which have shorts type coverage below the waist and anywhere from full to abbreviated chest coverage above the waist. The fact that these articles have this body coverage and that they are used as playwear makes classification in certain playsuit tariff provisions which usually require a category 237 visa appropriate.

When these same type items have pants coverage below the waist we now have coveralls, jumpsuits, or overalls, with the conclusion dependent on the extent and type of coverage above the natural waistline. For example, shirt type coverage above the waist means the item is a coverall or a jumpsuit, the choice of terms being a marketing decision with no classification consequence.

If the coverage above the waist is abbreviated to the extent that there is a normal bib front and possibly a bib back, then the item is a bib overall. Remember, for an item to be a playwear bib overall in headings 6103, 6104, 6203, or 6204, it should possess, at the least, a significant front bib rise. It should be noted that the bib overall illustrations found on page 834 of the Explanatory Notes are not an exhaustive display of the types of bib overalls includable here. Garments not possessing overall silhouettes are classifiable elsewhere, specifically, in the 6114 or 6211 provisions for sunsuits, washsuits and similar apparel. This same reasoning applies to shortalls which differ from overalls only in that they have shorts coverage below the waist.

The importance of this, from a classification perspective, is that children's bib overalls, shortalls, sunsuits, washsuits and similar apparel and two-piece playsuits are classified in tariff provisions corresponding to visa category 237, whereas garments outside sizes girls' 2-14, and boys' 2-7, are not. However, knit man-made fiber children's coveralls, jumpsuits and other full body garment tariff provisions constitute a notable exception to this general rule and take visa category 659. These classification practices, for the most part, pertain only to children's apparel, boys' sizes 2-7 and girls' sizes 2-16, or 2-14, for two-piece play-

suits. These practices do not extend to boys' sizes 8-20 or men's wear. Textile visa category 237 applies to some women's apparel in certain limited cases involving cotton and man-made fiber fabrics. A discussion of women's tariff classification principles with respect to visa category 237 and other visa categories is outside the scope of this discussion and any reference to women's apparel tariff classification should not be construed as information which is intended to be relied upon.

A unique modesty standard applies to children's apparel, one which, in certain cases, depending on the size and gender of the wearer, is higher or lower than that of adult wear. For example, it is acceptable to have a dress with or without an attached panty, with the panty visible, in sizes newborn to toddler 4. To merchandise such articles, in girls sizes 4-6x and above, as dresses, is not acceptable.

Also, jumper like garments with modest, uncomplicated A-line styling, in corduroy, 10 ounce denim and other winter weight fabrics, are classifiable in tariff provisions subject to visa category 359 or 659. This conclusion assumes the items are intended for cold weather use with other upper body garments such as blouses or turtlenecks. The fact that the garments can, on occasion, be worn alone, is not dispositive, because this is not their principal use.

Another distinction with women's apparel is made in regard to "divided dresses", items which for practical purposes resemble dresses, except for the culottes type skirt division below the waist. Because the legs are not enclosed by a continuous sheath of fabric these items are precluded from dress classification. Divided dresses fall within the provisions for "other garments," in headings 6114 and 6211. These garments, below the waist, impart a visual impression which obscures the frontal leg separation. In women's wear, divided dresses are classified in headings 6114 and 6211 in provisions for playsuits and similar apparel (provided leg coverage does not extend below the knee). However, in children's wear, these garments, which are popular for girls 7-16, are classified in the 6114 and 6211 basket provisions, for other wearing apparel, other, which are subject to visa categories 359 and 659. Children's divided dresses do not belong to a class or kind of merchandise principally used as one-piece playsuits. Children's playsuits are, by nature, casual and informal in appearance, and have leg separations which are readily apparent when the items are viewed from the front.

#### **TWO-PIECE PLAYSUITS**

Two-piece playsuits are another area where girls' apparel 2-14 and boys' apparel 2-7 receive different classification treatment from that accorded garments in larger sizes. A practice has developed, which allows tops and bottoms, e.g. blouses and shorts, possessing certain structural and functional relationships to one another to be classified in "playsuit" tariff provisions, which are subject to visa category 237.

Generally, such playsuits are two-piece physically connected entireties for girls 2-14 and boys 2-7, such as shirts and shorts having matching buttons and buttonholes, or shoulder loops with suspender straps

designed to join the two pieces, which are so manufactured that the use of one without the other is not practicable.

In other words, it should not be practicable to wear the shirt and shorts separately. The shorts should not be capable of use without the companion shirt. They should not possess a substantially elasticized waist which allows the item to be worn apart from its coordinated piece with other tops. The most common structural connection found is self fabric or elasticized suspender straps which are sewn to the rear waistband, pass through loops on the shirt shoulders and fasten to the front waist. The idea is that the pants waistband is less than half elasticized and the pants will not stay in place without brace straps which serve to support the apparel bottom and are supported themselves by loops on the shirt shoulders.

#### GARMENT USE

The concept of principal garment use in the United States is of prime importance in the classification of children's apparel. Following HTS principles, items are classifiable in the provision which best describes them, after allowing for the requirements and restrictions placed on classification by the chapter and section notes, the GRI's and the explanatory notes.

For example, cold weather, padded coveralls, may have some features which are similar to those found in one-piece ski-suits. However, without evidence that the garment is principally intended for use in skiing the item is classifiable in the provision for coveralls, insulated for cold weather protection. This same type reasoning applies to polyfill items purported to be ski jackets, overalls and pants. There must be a finding of principal use.

Somewhat different logic applies to fashion playwear with tracksuit styling. Such items for small children, sizes newborn to 6x/7, do not qualify as Heading 6112 or 6211 tracksuits because such items are not "clearly meant to be worn exclusively or mainly in the pursuit of sporting activities", as the Explanatory Notes, at page 841, indicate.

Determining the correct classification of children's apparel is challenging for both the importer and for Customs. Many factors are considered in making this determination, indications as to the actual or intended garment use are often provided by the importer in the way the merchandise is represented for sale in the marketplace. Also to be considered, is the firm's reputation in the trade. For instance, is the company a known resource for playwear, sleepwear or underwear? Does the company have a reputation as a resource for a specific apparel group such as playwear, sleepwear or underwear?

What are the "channels of sale" through which the product is merchandised? What particular store buyer places "open to buy" orders for this item, the playwear buyer, the sleepwear buyer, or some other store buyer? What do the various "decision makers" at each stage of the product's evolutionary development cycle, beginning with prototype development and ending with the product's sale to the retail consumer,

consider the item? Usually common unifying elements persist throughout the product development and merchandise sale process which identify the item as what it is.

The relevant circumstances surrounding the transaction should be scrutinized, including, but not limited to, a garment's construction and an objective evaluation of "what it is" according to all interested parties to the transaction, e.g., the designers, the manufacturers, the sellers, the retail store buyers, the purchasers and the actual users themselves. Familiarity with commercial trade practices within each dynamic market segment, e.g., outerwear, playwear, swimwear, and underwear, will lessen the likelihood that the garment will be misclassified.

#### INVOICING REQUIREMENTS

The accuracy of the information contained on invoices is an essential element in the many new and creative programs Customs has undertaken recently. These programs, including, but not limited to, automated entry processing and pre-importation review, may provide their benefits to the trade community as a whole, only if the data gathered is correct and complete. This concern for invoice accuracy is not new, but, as Customs progresses in automation, accuracy becomes indispensable.

Section 141.86 of the Customs Regulations (19 CFR 141.86) concerns invoicing requirements. Subparagraph (a)(3) of the section specifically requires that invoices have the following information:

A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, and symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed.

A "detailed description" is one which enables Customs to easily verify the classification of imported merchandise. Accordingly, the invoice description must indicate any information which has a direct bearing on the proper classification of the imported item. It is incumbent upon the importer of record to ensure that the detailed description is present on each invoice.

Invoices for products of Chapters 61 and 62 should include the following information:

1. The style number, the gender of the wearer, the common and commercial designation of each article, and the sizing of the garment. All components, including linings, trim, and interlining, must be identified as to composition, construction, individual and aggregate weights, and location on the garment. For garments with an outer shell of more than one construction or material (textile or non-textile) give the relative weights, percentage value, and surface area of each component. For outer shell components which are blends of different materials give the relative weights of each material in the component.

2. For two or more garments which are imported together and sold as a unit, whether all components are of the same fabric

construction, style, color, and composition, and of corresponding or compatible size. The invoice should indicate if any material appears on one component and not on the other component.

3. For garments which cover the upper torso, the area of the body which is covered and whether the garment has sleeves, a full or partial opening, the location of the opening, and the means of closure (e.g. zipper, buttons, snaps).

4. For knitted garments, the type of knit construction, e.g., jersey, rib, jacquard, and whether it is of a specialized fabric, e.g. napped, pile, terry. For garments which cover the upper torso, the stitch count per centimeter, in both the horizontal and vertical directions, and the stitch count per two centimeters in the direction the stitches were formed.

Importers do not have to provide information that is not necessary to classify a specific item. However, they are responsible for giving the Customs Service the information that is needed to affix the final classification. Additional information may be required for specific merchandise.

The following information is required on all invoices for infants' cotton knit sets in subheading 6111.20.6020, which provides for babies' garments and clothing accessories, knitted or crocheted, other, sets.

1. A detailed description of the set, e.g. 100% cotton jersey turtle-neck; 60% cotton, 40% polyester, interlock pants. Documentation that the individual components of the set are packaged together and intended and capable of being worn together,

2. Sizing. Items must be intended for use by babies, sizes newborn to 24 months of age,

3. Unit value. Dutiable value includes all costs, paid or payable, attributable to the transaction, including certain uninvoiced costs. Such costs include, and are not limited to, payments for assists, royalties, accessories, selling commissions, quota charges,

4. Total value of the shipment,

5. The terms of sale, and

6. The country of origin of each component of the set.

#### MARKING REQUIREMENTS

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. If a babies' clothing set is made in China, it should therefore be marked in English so as to indicate this fact (e.g., "Made in China").

#### QUOTAS AND TEXTILE CATEGORIES

The designated textile and apparel category are, for certain exporting countries, such as China, subdivided into parts. In such cases, the visa and quota category requirements for the subject merchandise may be affected. Since part categories are the result of international bilateral

agreements which are subject to frequent renegotiations and changes, it is recommended that importers obtain the most current information available. Customs suggests that apparel importers check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at local Customs offices.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, apparel importers can also contact their local Customs office prior to the importation of their merchandise to determine the current status of any import restraints or requirements.

#### GLOSSARY OF CHILDRENS' WEAR TERMS

The terms "defined" in this glossary are done so from the prospective of their tariff classification meaning and any derivative or nomenclature meaning they may have with respect to the Harmonized Tariff Schedule of the United States. The glossary terms and definitions are not derived primarily from lexicographic sources as the purpose here is to provide supplementary information not found in standard reference works, but which nonetheless, is useful in the classification of children's apparel.

**Babies' Textile Apparel and Textile Apparel Accessories**—According to the HTSUSA, the term "babies" is limited to young children of a body height not exceeding 86 centimeters. Articles for young children, of a body height not exceeding 86 centimeters, are classifiable exclusively in HTSUSA Chapters 61 and 62, in headings 6111 and 6209. Customs interprets 86 centimeters as equating to the commonly recognized size range 0-24 months.

**Baby**—A young child, age newborn to 24 months, with a body height not normally exceeding 86 centimeters or 34 inches. The term is interchangeable for tariff purposes with term "infant".

**Blanket Sleeper**—A full body, footed sleeping garment for a young child which is made of brushed or napped, knit man-made fibers, with a zipper extending from the neckline to one pant leg.

**Creeper**—An abbreviated, short sleeve babies' garment, with a snap crotch and without leg coverage which is designed for warm weather use and is usually of jersey, ribbed or interlock knit fabric.

**Coverall**—A full body garment designed to be worn alone. The item has blouse coverage above the waist and pants coverage below the waist. It is interchangeable for tariff purposes with the term "jumpsuit".

**Divided Dress**—A garment identical to a dress except for a divided skirt, culottes type division. The leg separation is not visible when the item is viewed from the front.

**Infant**—A young child, age newborn to 24 months (with a body height not normally exceeding 86 centimeters or 34 inches). It is interchangeable for tariff purposes with the term "baby".

**Infants' Set**—Two or more different garments, and/or headwear, imported together, in the same sizes, which are intended to be worn together, in sizes newborn to 24 months.

**Jomper**—A fashion term for a hybrid garment which contains elements of a romper and a jumper. The item resembles a jumper except for a divided skirt, culottes type division below the waist.

**Jumper**—A sleeveless, dress-like garment, usually with extended or dropped armhole openings, designed to be worn with another upper body garment, such as a blouse or pullover. The garment construction is such that the item is not intended for use alone.

**Jumpsuit**—A full body garment which can be worn alone. The item has at least limited blouse coverage above the waist and pants coverage below the waist. It is interchangeable for tariff purposes with the term "coverall".

**Overall**—A garment identical to pants or trousers except for the addition of a significant front bib type rise which extends to the vicinity of the breast and chest sides.

**Pinafore**—An apron-like "dress" garment with open sides designed for use with other garments such as a shirt, blouse, or dress, and possibly bloomers or a diaper cover. It is usually intended for young girls in sizes newborn to 24 months and toddler sizes 2-4T.

**Playsuit**—A general term for a one-piece, abbreviated garment, intended to be worn alone as informal attire for casual wear use. The item has shirt type coverage above the waist and shorts type coverage below the waist. Rompers, sunsuits and washsuits are all considered playsuits for tariff purposes. The term is not to be confused with the term two-piece playsuit which is defined elsewhere in the glossary.

**Popover**—A fashion term for a pinafore. It is interchangeable for tariff purposes with term "pinafore".

**Romper**—An abbreviated one piece garment designed to be worn alone. The item has shirt or blouse coverage above the waist and shorts coverage below the waist.

**Scooter Skirt**—A fashion term for a hybrid garment with a shorts type body and an additional fabric flap which is overlaid at the front. The fabric flap extends across the garment front, obscuring the leg separation and creating the visual impression, when viewed from the front, of a skirt.

**Shortall**—A garment identical to shorts except for the addition of a significant bib type rise which extends to the vicinity of the breast and chest sides.

**Skeggings**—A fashion term for pants style leggings with a sewn-in skirt or peplum at the waist.

**Skirt**—A lower body garment, with coverage, normally extending from the waist to the mid-thigh vicinity or below, which envelopes the wearer in an uninterrupted, continuous fabric sheath. Fashion may cause the body coverage of the garment to vary somewhat, however, it always covers the lower torso.

**Skirtall**—A fashion term for a garment which is identical to a skirt except for the addition of a significant front bib type rise which extends to the vicinity of the breast and chest sides.

**Skort**—A fashion term for a divided skirt or culotte. A lower body garment, which envelopes the legs in separate fabric sheathes. Imparts the visual impression of a skirt. The leg separation is not visible when the item is viewed from the front.

**Skortall**—A fashion term for a garment which is identical to a skort except for the addition of a significant front bib type rise which extends to the vicinity of the breast and chest sides.

**Skromper**—A fashion term for a garment which is identical to a romper except for the addition of a skirt or peplum.

**Sleep and Play**—An infants' wear merchandising term, meaning apparel is suitable for use during babies' intermittent sleep and play periods. Such garments are usually made of finely knit jersey or interlock fabric and are not specifically constructed as sleepwear.

**Stretchesuit**—A full body coverall, usually footed, knit, with long sleeves, for young children, sizes newborn to 24 months.

**Sunsuit**—An abbreviated one piece backless garment designed to be worn alone, with limited upper body coverage above the waist and panty or shorts coverage below the waist.

**Two-Piece Playsuit**—An upper body garment, e.g., a shirt or blouse, and a lower body garment, e.g., pants, shorts, overall, skirtall, which are structurally connected to one another by means of button and buttonhole combinations or suspender strap and shirt shoulder loop combinations so that the use of one garment without the other garment is not practicable or commercially realistic.

**Washesuit**—An abbreviated one piece garment designed to be worn alone, with limited upper body coverage above the waist and panty or shorts coverage below the waist. It is usually intended for young children in month sizes newborn to 24 months and toddler sizes 2-4T.

What Every Member of the  
Trade Community Should Know About:

# *Accreditation of Laboratories and Gaugers*



A Basic Level  
Informed Compliance Publication of the  
U.S. Customs Service

September, 1999

**NOTICE:**

This publication was prepared for the guidance and information of the trade community. It reflects the Customs Service's position or interpretation of the applicable laws or regulations as of the date of publication, as shown on the front cover. It does not in any way replace or supersede the laws or regulations. Only the latest official version of the laws or regulations is authoritative.

*Publication History*

*First Issued: September, 1999*

**PRINTING NOTE:**

This publication was designed for electronic distribution via the Customs Electronic Bulletin Board and Customs Internet World Wide Web site (<http://www.customs.gov>) and is being distributed in a variety of formats. It was originally set up in WordPerfect® 8 using a Lexmark Optra N printer driver. Pagination and margins in downloaded versions may vary depending on the wordprocessor and/or printer used. If you wish to maintain all the original settings, you may wish to download the .pdf version which can then be printed using the freely available Adobe Acrobat Reader®.

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The *Office of Regulations and Rulings* has prepared this publication on ***Accreditation of Laboratories and Gaugers***, as part of a series of informed compliance publications advising the trade community of changes in Customs procedures as a result of the Mod Act and other legislation. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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### INTRODUCTION

On December 8, 1993, the United States enacted the North American Free Trade Agreement Implementation Act ("the Act"), Pub. L. 103-182, 107 Stat. 2057. Title VI of the Act contains provisions pertaining to Customs Modernization (107 Stat. 2170), and is commonly referred to as the Customs Modernization Act or "Mod Act" for short. Section 613 of the "Mod Act" amended section 499 of the Tariff Act of 1930 (19 U.S.C. 1499), which provides Customs with the authority to conduct examinations and detain imported merchandise, by adding a new paragraph (b) concerning commercial laboratories and gaugers.

### SUMMARY

Section 613 authorized Customs to set procedures for the accreditation of commercial laboratories and the approval of commercial gaugers, and the suspension and revocation of accreditation or approvals. Under the law, procedures for accrediting commercial laboratories and gaugers will apply only when the determination of the elements relating to admissibility, quantity, or composition of imported merchandise is vested in or delegated to the Customs Service. Commercial laboratories and gaugers may be accredited only to perform tests that otherwise would be performed by Customs laboratories. Laboratories and gaugers that are currently accredited under Customs regulations will not be required to reapply, but will be subject to reaccreditation. The "Mod Act" also creates appeal rights for commercial laboratories and gaugers to challenge in the Court of International Trade any order or decision relating to their accreditation or reaccreditation or the assessment of a penalty within 60 days of its issuance.

In the absence of Customs testing, Customs must accept quantity and analysis results from the Customs-accredited laboratories and Customs-approved gaugers. However, nothing limits or precludes Customs or any other Federal agency from independently testing, analyzing or quantifying any merchandise.

The Secretary of the Treasury is required to prescribe regulations that establish the conditions under which the Customs Service may suspend or revoke accreditation or institute penalties for violations of law, regulations or the commercial laboratory or gauger agreement. Such penalties must not exceed \$100,000 and will be in addition to recoveries of any actual or potential loss of revenue that may have resulted from an intentionally falsified report or analysis submitted by an accredited laboratory or gauger. Fees for receiving accreditation and reaccreditation are specifically authorized by section 613.

Under the "Mod Act," testing procedures and methodologies will be made available upon request to laboratories and importers or their agents, unless they are proprietary to the Customs Service (i.e. developed by Customs for enforcement purposes) or the holder of a copyright or patent. Test results will, unless they reveal information proprietary to the Customs Service or the holder of a copyright or patent, be made available on request to the importer or its agents.

The regulations implementing section 613 were published as amendments to sections 151.12 and 151.13 of the Customs Regulations (19 CFR §151.12 and §151.13) in the *Federal Register* on September 7, 1999 (64 FR 48528) and are effective on October 7, 1999. In this publication, references to Part 151, section 151.12 or 151.13 or any of their paragraphs are to the revised regulations.

#### ACCREDITATION OF COMMERCIAL LABORATORIES

##### WHAT IS A "CUSTOMS-ACCREDITED LABORATORY"?

"Commercial laboratories" are individuals and commercial organizations that analyze merchandise, *i.e.*, determine its composition and/or characteristics, through laboratory analysis. A "Customs-accredited laboratory" is a commercial laboratory, within the United States, that has demonstrated, to the satisfaction of the Director, Laboratories & Scientific Services, U.S. Customs Service, ("the Director") pursuant to the new regulations, the capability to perform analysis of certain commodities to determine elements relating to the admissibility, quantity, composition, or characteristics of imported merchandise. Customs accreditation extends only to the performance of functions which are vested in, or delegated to, Customs.

Also, Customs wishes to note that laboratories may be accredited in Puerto Rico, as the United States is defined to include Puerto Rico, *see*, 19 CFR 101.1, "Customs territory of the United States."

##### WHAT ARE THE OBLIGATIONS OF A CUSTOMS-ACCREDITED LABORATORY?

A commercial laboratory accredited by Customs agrees to the following conditions and requirements:

- To comply with the requirements of Part 151, and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Director;
- To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-accredited laboratory. It is understood that this does not prohibit acceptance of the usual fees for professional services;
- To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the laboratory is accredited, and allow the Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of analysis procedures, reviews of submitted records, and proficiency testing through check samples ("Check samples" are samples which have been distributed by Customs to accredited laboratories to test their proficiency in a certain area of accreditation);
- To retain those laboratory records beyond the five-year record-retention period and samples (see 151.12(j)) specified by

Customs as necessary to address matters concerned in pending litigation, and, if laboratory operations or accreditation cease, to contact Customs immediately regarding the disposition of records/samples retained;

- To promptly investigate any circumstance which might affect the accuracy of work performed as an accredited laboratory, to correct the situation immediately, and to notify both the port director and the Director of such matters, their consequences, and any corrective action taken or that needs to be taken; and
- To immediately notify both the port director and the Director of any attempt to impede, influence, or coerce laboratory personnel in the performance of their duties, or of any decision to terminate laboratory operations or accredited status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, or approved signatories to notify the Director by certified mail.

#### WHAT ARE THE COMMODITY GROUPS FOR WHICH ACCREDITATION MAY BE SOUGHT?

Commercial laboratories may apply for accreditation to perform tests without special permission from the Director for any of the following commodity groups:

- *Dairy and Chocolate Products* entered under Chapters 4, 18, and 21 of the Harmonized Tariff Schedule of the United States (HTSUS);
- *Food and Food Products* entered under Chapters 7-12, 15, 16, and 19-21, HTSUS;
- *Botanical Identification*—materials and products entered under Chapters 14 and 44-46, HTSUS;
- *Sugar, Sugar Syrups, and Confectionery products* entered under Chapter 17, HTSUS;
- *Spirituuous Beverages* entered under Chapter 22, HTSUS;
- *Building Stone, Ceramics, Glassware, and Other Mineral Substances* entered under Chapters 25 and 68-70, HTSUS;
- *Inorganic Materials, including Inorganic Compounds and Ores*, entered under Chapters 26, 28, 31, and 36-38, HTSUS;
- *Petroleum and Petroleum Products* entered under Chapters 27 and 29, HTSUS;
- *Organic Materials, including Intermediates and Pharmaceuticals*, entered under Chapters 29, 30, 34, 35, and 38, HTSUS;
- *Rubber, Plastics, Polymers, Pigments and Paints* entered under Chapters 32, 39, and 40, HTSUS;
- *Essential Oils and Perfumes* entered under Chapter 33, HTSUS;
- *Leather and Articles of Leather* entered under Chapters 41 and 42, HTSUS;

- *Paper and Paper Products* entered under Chapters 47-49, HTSUS;
- *Textiles and Related Products, including footwear and hats*, entered under Chapters 50-67, HTSUS; and,
- *Metals and Alloys* entered under Chapters 72-83, HTSUS.

Application may be made for accreditation in more than one commodity group. At the discretion of the Director accreditation may be granted for subgroups of tests within a commodity group or for commodity groups not specifically enumerated. Once accredited, a Customs-accredited laboratory may apply at any time to expand its accreditation, to add new testing sites, or increase the number of commodity groups or subgroups accredited.

#### **WHAT ARE THE APPROVED METHODS OF ANALYSIS?**

Customs-accredited laboratories must follow the general or specific testing methods set forth in Commodity Group Brochures and the U.S. Customs Laboratory Methods Manual in the testing of designated commodities, unless the Director gives written permission to use an alternate method. Alternative methods will be considered and approved on a case-by-case basis.

A "Commodity Group Brochure" is a booklet which contains a listing of laboratory methods which commercial laboratories are required to have the capability to perform to qualify for Customs-accreditation in a particular commodity group. The brochures and the U.S. Customs Laboratory Methods Manual will specify the particular laboratory testing methods required for particular commodity groups, unless written permission from the Director is given to use an alternate method. Procedures required by the Director may reference applicable general industry testing standards, published by such organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API). Commodity Group Brochures and a listing of the methods found in the U.S. Customs Laboratory Methods Manual are available from the U.S. Customs Service, Attention: Director, Laboratories & Scientific Services, Washington, D.C. 20229 and can also be found on the Customs Internet Web Site: <http://www.customs.us-treas.gov>.

#### **HOW WOULD A COMMERCIAL LABORATORY BECOME A CUSTOMS-ACCREDITED LABORATORY?**

##### **WHAT SHOULD AN APPLICATION CONTAIN?**

An application for Customs accreditation must contain the following information:

- The applicant's legal name and the address of its principal place of business and any other facility out of which it will work;
- Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to,

- importers, other commercial laboratories, producers, refiners, Customs brokers, and carriers;
- A statement of financial condition;
  - If a corporation, a copy of the articles of incorporation and the names of all officers and directors;
  - The names, titles, and qualifications of each person who will be authorized to sign or approve analysis reports on behalf of the commercial laboratory;
  - A complete description of the applicant's facilities, instruments, and equipment;
  - An express agreement that if notified by Customs of pending accreditation to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Director. In order to retain Customs accreditation, the laboratory must maintain an adequate bond, as determined by the port director);
  - A listing of each commodity group for which accreditation is being sought and, if methods are being submitted for approval which are not specifically provided for in a Commodity Group Brochure and the U.S. Customs Laboratory Methods Manual, a listing of such methods;
  - A listing by commodity group of each method according to its Customs Laboratory Method Number for which the laboratory is seeking accreditation;
  - An express agreement to be bound by the obligations contained in paragraph (c) of this section; and,
  - A nonrefundable pre-payment equal to 50 percent of the fixed accreditation fee, as published in the *Federal Register* and *Customs Bulletin*, to cover preliminary processing costs. Further, the applicant agrees to pay Customs within 30 days of notification of preliminary accreditation the associated charges assessed for accreditation, *i.e.*, those charges for actual travel and background investigation costs, and the balance of the fixed accreditation fee.

#### **WHERE SHOULD AN APPLICATION BE SENT?**

A commercial laboratory seeking accreditation or an extension of an existing accreditation must send a letter of application to the U.S. Customs Service, Attention: Director, Laboratories & Scientific Services, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

#### **HOW WILL AN APPLICATION BE REVIEWED?**

##### **PHYSICAL PLANT AND MANAGEMENT SYSTEM**

The facility of the applicant will be inspected to ensure that it is properly equipped to perform the necessary tests and that staff personnel are capable of performing required tests. Customs evaluation of an ap-

plicant's professional abilities will be in accordance with the general criteria contained in either the American Society for Testing and Materials (ASTM) E548 (*Standard Guide for General Criteria Used for Evaluating Laboratory Competence*) or the ISO/IEC Guide 25 (*General Requirements for the Competence of Calibration and Testing Laboratories*). This review will ascertain the laboratory's ability to manage and control the acquisition of technical data. The review will be performed at the time of initial application and upon reaccreditation at three-year intervals.

#### **ABILITY TO PERFORM TESTS ON SPECIFIED COMMODITY GROUPS**

For each commodity group applied for, the applicant will undergo a separate review of testing capabilities. The specific accreditation will be based on the laboratory's ability to perform the tests required for that commodity group. This will include the qualifications of the technical personnel in this field and the instrument availability required by the test methods.

Maintenance of accreditation will be on-going and may require the submission of test results on periodic check samples. The criteria for acceptance shall be based on the laboratory's ability to produce a work product that assists in the proper classification and entry of imported merchandise.

#### **DETERMINATION OF COMPETENCE**

The Director will determine the applicant's overall competence, independence, and character by conducting on-site inspections, which may include demonstrations by the applicant of analysis procedures and a review of analysis records submitted, and background investigations. An "analysis record" is a compilation of all documents which have been generated during the course of analysis of a particular sample which, under normal circumstances, may include, both in paper and electronic-form, such documents as work sheets, notes, associated spectra (both spectra of the actual product and any standard spectra used for comparison), photographs and microphotographs, and the laboratory report. The Director may also conduct proficiency testing through check samples.

#### **EVALUATION OF TECHNICAL AND OPERATIONAL REQUIREMENTS**

Customs will determine whether the following technical and operational requirements are met:

- *Equipment.* The laboratory must be equipped with all of the instruments and equipment needed to conduct the tests for which it is accredited. The laboratory shall ensure that all instruments and equipment are properly calibrated, checked, and maintained.
- *Facilities.* The laboratory must have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate test procedures.

- *Personnel.* The laboratory shall be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (e.g., maintaining equipment, calibrating instruments, performing laboratory analyses, evaluating analytical results, and signing analysis reports on behalf of the laboratory). In general, each technical staff member should hold, at a minimum, a bachelor's degree in science or have two years related experience in an analytical laboratory.

#### **HOW WILL AN APPLICANT BE NOTIFIED CONCERNING ACCREDITATION?**

##### **NOTICE OF APPROVAL OR NONSELECTION**

When Customs evaluation of a laboratory's credentials is completed, the Director will notify the laboratory in writing of its preliminary approval or nonselection. (Final approval determinations will not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the applicable accreditation fee). Notices of nonselection will state the specific reasons for the determination. All notices of accreditation, reaccreditation, or extension of existing accreditations will be published in the *Federal Register* and *Customs Bulletin*.

##### **GROUND S FOR NONSELECTION**

The Director may deny a laboratory's application for any of the following reasons:

- The application contains false or misleading information concerning a material fact;
- The laboratory, a principal of the laboratory, or a person the Director determines is exercising substantial ownership or control over the laboratory operation is indicted for, convicted of, or has committed acts which would, under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, theft-related offenses or any other violation which would reflect adversely on the business integrity of the applicant;
- A determination is made that the laboratory-applicant does not possess the technical capability, have adequate facilities or management to perform the approved methods of analysis for Customs purposes;
- A determination is made that the laboratory has submitted false reports or statements concerning the sampling of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;
- Nonpayment of assessed charges and the balance of the fixed accreditation fee; or
- Failure to execute a bond in accordance with part 113 of the Customs Regulations (19 CFR Part 113).

## **ADVERSE ACCREDITATION DECISIONS**

### **PRELIMINARY NOTICE**

A laboratory which is not selected for accreditation will be sent a preliminary notice of action which states the specific grounds for nonselection and advises that the laboratory may file a response with the Director within 30 calendar days of receipt of the preliminary notice addressing the grounds for nonselection.

### **FINAL NOTICE**

If the laboratory does not respond to the preliminary notice, a final notice of nonselection will be issued by the Director after 30 calendar days of receipt of the preliminary notice which states the specific grounds for the nonselection and advises that the laboratory may administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of receipt of the final notice. If the laboratory files a timely response, then the Director, within 30 calendar days of receipt of the response, will issue a final determination regarding the laboratory's accreditation. If this final determination is adverse to the laboratory, then the final notice of nonselection will state the specific grounds for nonselection and advise the laboratory that it may administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of receipt of the final notice.

### **APPEALS DECISION**

Laboratories receiving a final notice of nonselection and wishing to appeal the determination must file an appeal within 30 calendar days to the Assistant Commissioner, Office of Field Operations. Within 30 calendar days of receipt of the appeal, the Assistant Commissioner will issue a decision on the appeal. If the Assistant Commissioner's decision is adverse to the laboratory, then it may choose to either:

- Submit a new application to the Director after waiting 90 days from the date of the Director's last decision; or
- File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days after the issuance of the Director's final decision.

### **WHAT ARE THE ACCREDITATION OR REACCREDITATION FEE REQUIREMENTS?**

#### **IN GENERAL**

A fixed fee, representing Customs administrative overhead expense, will be assessed for each application for accreditation or reaccreditation. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to accreditation

and reaccreditation. The fixed fee will be published in the *Customs Bulletin* and the *Federal Register*. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted periodically; any changes shall be published in the *Customs Bulletin* and the *Federal Register*.

The initial fixed fee schedules for accrediting or reaccrediting laboratories are:

General Accreditation Fee	\$ 750
Additional Commodities Fee	\$ 200
Laboratory Reaccreditation Fee	\$ 375
Commodity Reaccreditation Fee	\$ 150

The initial variable fee schedules for accrediting or reaccrediting laboratories are approximately \$ 1,000 for travel per visit and \$ 1,700 per background investigation.

#### ACCREDITATION FEES

A nonrefundable pre-payment equal to 50 percent of the fixed accreditation fee to cover preliminary processing costs must accompany each application for accreditation. Before a laboratory will be accredited, it must remit to Customs, Account Services Division, within the 30 day billing period the associated charges assessed for the accreditation and the balance of the fixed accreditation fee.

#### REACCREDITATION FEES

Before a laboratory will be reaccredited, it must submit to Customs, Account Services Division, within the 30 day billing period the fixed reaccreditation fee.

#### DISPUTES

In the event a laboratory disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an appeal within 30 calendar days of the date of the assessment with the Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Director will make findings of fact concerning the merits of an appeal and communicate the agency decision to the laboratory in writing within 30 calendar days of the date of the appeal.

#### CAN EXISTING CUSTOMS-ACCREDITED LABORATORIES CONTINUE TO OPERATE?

Commercial laboratories accredited by the Director prior to December 8, 1993, (except for laboratories which have had their accreditation suspended or revoked) will retain that accreditation under the regulations provided they conduct their business in a manner consistent with the administrative portions of the new regulations in section 151.12. Laboratories which have had their accreditations continued under this section will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of

the new regulation. At the time of reaccreditation, these laboratories must meet the requirements of section 151.12 and remit to Customs, Account Services Division, within the 30 day billing period the fixed reaccreditation fee. Failure to meet these requirements will result in revocation or suspension of the accreditation.

### **HOW WILL CUSTOMS-ACCREDITED LABORATORIES OPERATE?**

#### **SAMPLES FOR TESTING**

Upon request by the importer of record of merchandise, the port director will release a representative sample of the merchandise for testing by a Customs-accredited laboratory at the expense of the importer. Under Customs supervision, the sample will be split into two essentially equal parts and given to the Customs-accredited laboratory. One portion of the sample may be used by the Customs-accredited laboratory for its testing. The other portion must be retained by the laboratory, under appropriate storage conditions, for Customs use, as necessary, unless Customs requires other specific procedures. Upon request, the sample portion reserved for Customs purposes must be surrendered to Customs.

#### **RETENTION OF NON-PERISHABLE SAMPLES**

Non-perishable samples reserved for Customs and sample remnants from any testing must be retained by the accredited laboratory for a period of four months from the date of the laboratory's final analysis report, unless other instructions are issued in writing by Customs. At the end of this retention time period the accredited laboratory may dispose of the retained samples and sample remnants in a manner consistent with federal, state, and local statutes.

#### **RETENTION OF PERISHABLE SAMPLES**

Perishable samples reserved for Customs and sample remnants from any testing can be disposed of more expeditiously than provided above, if done in accordance with acceptable laboratory procedures, unless other instructions are issued in writing by Customs.

### **REPORTS**

#### **CONTENTS OF REPORTS**

Testing data must be obtained using methods approved by the Director. The testing results from a Customs-accredited laboratory that are submitted by an importer of record with respect to merchandise in an entry, *in the absence of testing conducted by Customs laboratories*, will be accepted by Customs provided that the importer of record certifies that the sample tested was taken from the merchandise in the entry and the report establishes elements relating to the admissibility, quantity, composition, or characteristics of the merchandise entered, as required by law.

### STATUS OF COMMERCIAL REPORTS WHERE CUSTOMS ALSO TESTS MERCHANDISE

Nothing in the regulations precludes Customs from sampling and testing merchandise from a shipment which has been sampled and tested by a Customs-accredited laboratory at the request of an importer. In cases where a shipment has been analyzed by both Customs and a Customs-accredited laboratory, all Customs actions will be based upon the analysis provided by the Customs laboratory, unless the Director advises otherwise. If Customs tests merchandise, it will release the results of its test to the importer of record or its agent upon request unless the testing information is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

### RECORDKEEPING REQUIREMENTS

Customs-accredited laboratories must maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of this chapter and any other applicable provision of law, and make them available during normal business hours for Customs inspection. In addition, these laboratories must maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records must be maintained for five years, unless the laboratory is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

### SAMPLE RECORDS

Records for each sample tested for Customs purposes must be readily accessible and contain the following information:

- A unique identifying number;
- The date when the sample was received or taken;
- The identity of the commodity (*e.g.* crude oil);
- The name of the client;
- The source of the sample (*e.g.*, name of vessel, flight number of airline, name of individual taking the sample); and,
- If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

### MAJOR EQUIPMENT RECORDS

Records for each major piece of equipment or instrument (including analytical balances) used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work, identifying who performed the service and when.

### RECORDS OF ANALYTICAL PROCEDURES

The Customs-accredited laboratory must maintain complete and up-to-date copies of all approved analytical procedures, calibration methods, etc., and must document the procedures each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

### LABORATORY ANALYSIS RECORDS

The Customs-accredited laboratory must identify each analysis by sample record number (see 19 CFR §151.12 (j)(3)(i)) and must maintain all information or data (such as sample weights, temperatures, references to filed spectra, etc.) associated with each Customs-related laboratory analysis. Each analysis record must be dated and initialed or signed by the staff member(s) who did the work.

### LABORATORY ANALYSIS REPORTS

Each laboratory analysis report submitted to Customs must include:

- The name and address of the Customs-accredited laboratory;
- A description and identification of the sample, including its unique identifying number;
- The designations of each analysis procedure used;
- The analysis report itself (*i.e.*, the pertinent characteristics of the sample);
- The date of the report; and,
- The typed name and signature of the person accepting technical responsibility for the analysis report (*i.e.*, an approved signatory).

### REPRESENTATION OF CUSTOMS-ACCREDITED STATUS

Commercial laboratories accredited by Customs must limit statements or wording regarding their accreditation to an accurate description of the tests for the commodity group(s) for which accreditation has been obtained. Use of terms other than those appearing in the notice of approval (see §151.12(g)) is prohibited.

### SUBCONTRACTING PROHIBITED

Customs-accredited laboratories shall not subcontract Customs-related analysis work to non Customs-accredited laboratories or non Customs-approved gaugers, but may subcontract to other facilities that are Customs-accredited or approved and in good standing.

### APPROVAL OF COMMERCIAL GAUGERS

#### WHAT IS A "CUSTOMS-APPROVED GAUGER"?

"Commercial gaugers" are individuals and commercial organizations that measure, gauge, or sample merchandise (usually merchandise in bulk form) and who deal mainly with animal and vegetable oils, petroleum, petroleum products, and bulk chemicals. A "Customs-approved gauger" is a commercial concern, within the United States, that

has demonstrated, to the satisfaction of the Director, Laboratories & Scientific Services, U.S. Customs Service, ("the Director") the capability to perform certain gauging and measurement procedures for certain commodities. Customs approval extends only to the performance of such functions as are vested in, or delegated to, Customs.

Also, Customs wishes to note that gaugers may be approved in Puerto Rico, as the United States is defined to include Puerto Rico, *see*, 19 CFR 101.1, "Customs territory of the United States."

#### WHAT ARE THE OBLIGATIONS OF A CUSTOMS-APPROVED GAUGER?

A commercial gauger approved by Customs agrees to the following conditions and requirements:

- To comply with the requirements of part 151, and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Director;
- To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-approved gauger. It is understood that this does not prohibit acceptance of the usual fees for professional services;
- To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the gauger is approved, and allow the Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of gauging procedures, and reviews of submitted records;
- To retain those gauger records beyond the five-year record-retention period specified by Customs as necessary to address matters concerned in pending litigation, and, if gauger operations or approval cease, to contact Customs immediately regarding the disposition of records retained;
- To promptly investigate any circumstance which might affect the accuracy of work performed as an approved gauger, to correct the situation immediately, and to notify both the port director and the Director of such matters, their consequences, and any corrective action taken or that needs to be taken; and
- To immediately notify both the port director and the Director of any attempt to impede, influence, or coerce gauger personnel in the performance of their duties, or of any decision to terminate gauger operations or approval status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, or approved signatories to notify the Director by certified mail.

### WHAT ARE THE APPROVED MEASUREMENT PROCEDURES?

Customs-approved gaugers must comply with appropriate procedures published by such professional organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API), unless the Director gives written permission to use an alternate method. Alternative methods will be considered and approved on a case-by-case basis.

### HOW WOULD A COMMERCIAL GAUGER BECOME A CUSTOMS-APPROVED GAUGER?

#### WHAT SHOULD AN APPLICATION CONTAIN?

An application for Customs approval must contain the following information:

- The applicant's legal name and the addresses of its principal place of business and any other facility out of which it will work;
- Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers; producers; refiners; Customs brokers; or carriers;
- A statement of financial condition;
- If a corporation, a copy of the articles of incorporation and the names of all officers and directors;
- The names, titles, and qualifications of each person who will be authorized to sign or approve gauging reports on behalf of the commercial gauger;
- A complete description of the applicant's facilities, instruments, and equipment;
- An express agreement that if notified by Customs of pending approval to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Director. In order to retain Customs approval, the gauger must maintain an adequate bond, as determined by the port director);
- An express agreement to be bound by the obligations contained in paragraph (b) of this section; and,
- A nonrefundable pre-payment equal to 50 percent of the fixed approval fee, as published in the *Federal Register* and *Customs Bulletin*, to cover preliminary processing costs. Further, the applicant agrees to pay Customs within 30 days of notification of preliminary approval the associated charges assessed for approval, i.e., those charges for actual travel and background investigation costs, and the balance of the fixed approval fee.

### WHERE SHOULD AN APPLICATION BE SENT?

A commercial gauger seeking approval or an extension of an existing approval must send a letter of application to the U.S. Customs Service, Attention: Director, Laboratories & Scientific Services, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

### HOW WILL AN APPLICATION BE REVIEWED?

#### DETERMINATION OF COMPETENCE

The Director will determine the applicant's overall competence, independence, and character by conducting on-site inspections, which may include demonstrations by the applicant of gauging procedures and a review of records submitted, and background investigations. The Director may also conduct proficiency testing through check samples.

#### EVALUATION OF TECHNICAL AND OPERATIONAL REQUIREMENTS

Customs will determine whether the following technical and operational requirements are met:

- *Equipment.* The facility shall be equipped with all of the instruments and equipment needed to conduct approved services. The gauger shall ensure that all instruments and equipment are properly calibrated, checked, and maintained.
- *Facilities.* The facility shall have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate measurements.
- *Personnel.* The facility shall be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (*e.g.*, maintaining equipment, calibrating instruments, performing gauging services, evaluating gauging results, and signing gauging reports on behalf of the commercial gauger). In general, each technical staff member should have, at a minimum, six months training and experience in gauging.

### HOW WILL AN APPLICANT BE NOTIFIED CONCERNING APPROVAL?

#### NOTICE OF APPROVAL OR NONSELECTION

When Customs evaluation of a gauger's credentials is completed, the Director will notify the gauger in writing of its preliminary approval or nonselection. (Final approval decisions will not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the application approval fee). Notices of nonselection will state the specific grounds for the determination. All final notices of approval, reapproval, or extension of a gauger's existing Customs-approval will be published in the *Federal Register* and *Customs Bulletin*.

### **GROUND'S FOR NONSELECTION**

The Director may deny a gauger's application for any of the following reasons:

- The application contains false or misleading information concerning a material fact;
- The gauger, a principal of the gauging facility, or a person the Director determines is exercising substantial ownership or control over the gauger operation is indicted for, convicted of, or has committed acts which would, under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, theft-related offenses or which would reflect adversely on the business integrity of the applicant;
- A determination is made that the gauger-applicant does not possess the capability, have adequate facilities, or management to perform the approved methods of measurement for Customs purposes;
- A determination is made that the gauger has submitted false reports or statements concerning the measurement of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;
- Nonpayment of assessed charges and the balance of the fixed approval fee; or
- Failure to execute a bond in accordance with part 113 of the regulations.

### **ADVERSE APPROVAL DECISIONS**

#### **PRELIMINARY NOTICE**

A gauger which is not selected for approval will be sent a preliminary notice of action which states the specific grounds for nonselection and advises that the gauger may file a response with the Director within 30 calendar days of receipt of the preliminary notice addressing the grounds for nonselection.

#### **FINAL NOTICE**

If the gauger does not respond to the preliminary notice, a final notice of nonselection will be issued by the Director after 30 calendar days which states the specific grounds for the nonselection and advises that the gauger may administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of receipt of the final notice. If the gauger files a timely response, then the Director, within 30 calendar days of receipt of the response, will issue a final determination regarding the gauger's approval. If this final determination is adverse to the gauger, then the final notice of nonselection will state the specific grounds for nonselection and advise the gauger that it may administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of receipt of the final notice.

### APPEAL DECISION

The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of receipt of the appeal. If the appeal decision is adverse to the gauger, then the gauger may choose to pursue one of the following two options:

- Submit a new application for approval to the Director after waiting 90 days from the date of the Director's last decision; or
- File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days after the issuance of the Director's final decision.

### WHAT ARE THE APPROVAL OR REAPPROVAL FEE REQUIREMENTS?

#### IN GENERAL

A fixed fee, representing Customs administrative overhead expense, will be assessed for each application for approval or reapproval. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to approval and reapproval. The fixed fee will be published in the *Customs Bulletin* and the *Federal Register*. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted periodically; any changes will be published in the *Customs Bulletin* and the *Federal Register*.

The initial fixed fee schedules for approving or reapproving gaugers are:

General Approval Fee	\$ 400
Reapproval Fee	\$ 200

The initial variable fee schedules for approving or reapproving gaugers are approximately \$ 1,000 for travel per visit and \$ 1,700 per background investigation.

#### APPROVAL FEES

A nonrefundable pre-payment equal to 50 percent of the fixed approval fee to cover preliminary processing costs must accompany each application for approval. Before a gauger will be approved, it must submit to Customs, Account Services Division, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee.

#### REAPPROVAL FEES

Before a gauger will be reapproved, it must submit to Customs, Account Services Division, within the 30 day billing period the fixed reapproval fee.

#### DISPUTES

In the event a gauger disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an ap-

peal within 30 calendar days of the date of the assessment with the Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Director must make findings of fact concerning the merits of an appeal and communicate the agency decision to the gauger in writing within 30 calendar days of the date of the appeal.

#### **CAN EXISTING CUSTOMS-APPROVED GAUGERS CONTINUE TO OPERATE?**

Commercial gaugers approved by the Director prior to December 8, 1993, will retain approval under the new regulations provided that they have not had their approval suspended or revoked and they conduct their business in a manner consistent with the administrative portions of this section. Gaugers which have had their approvals continued under this section will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of the new regulations. At the time of reapproval, these gaugers must meet the requirements of section 151.13 and remit to Customs, Account Services Division, within the 30 day billing period the fixed reapproval fee. Failure to meet these requirements will result in revocation or suspension of the approval.

#### **HOW WILL CUSTOMS-APPROVED GAUGERS OPERATE?**

##### **REPORTS**

##### **CONTENTS OF REPORTS**

The measurement results from a Customs-approved gauger that are submitted by an importer of record with respect to merchandise in an entry, in the absence of measurements conducted by Customs, will be accepted by Customs, provided that the importer of record certifies that the measurement was of the merchandise in the entry. All reports must measure net landed quantity, except in the case of crude petroleum of Heading 2709, Harmonized Tariff Schedule of the United States (HTSUS), which may be measured by gross quantity. Reports must be given in the appropriate HTSUS units of quantity, *e.g.*, liters, barrels, or kilograms.

HTSUS	Product	Unit of Quantity
Headings 1501-1515	Animal and vegetable oils	Kilogram
Subheadings 2707.10 - 2707.30 and 2902.20 - 2902.44	Benzene, toluene and xylene	Liter
Heading 2709	Crude Petroleum	Barrel

HTSUS	Product	Unit of Quantity
Heading 2710 (various subheadings)	Fuel oils, motor oils, kerosene, naphtha, lubricating oils	Barrel
Chapter 29 (various subheadings)	Organic compounds in bulk and liquid form	Kilogram, liter, etc.

#### STATUS OF COMMERCIAL REPORTS WHERE CUSTOMS ALSO GAUGES MERCHANDISE

Nothing in the regulations precludes Customs from gauging a shipment which has been gauged by a Customs-approved gauger at the request of an importer. In cases where a shipment has been gauged by both Customs and a Customs-approved gauger, all Customs actions will be based upon the gauging reports issued by Customs, unless the Director advises other actions. If Customs gauges merchandise, it will release the report of its measurements to the importer of record or its agent upon request unless the gauging information is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

#### RECORDKEEPING REQUIREMENTS

Customs-approved gaugers must maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of the Customs Regulations and any other applicable provisions of law, and make them available during normal business hours for Customs inspection. In addition, these gaugers must maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records must be maintained for five years, unless the gauger is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

#### TRANSACTION RECORDS

Records for each Customs-related transaction must be readily accessible and have the following:

- A unique identifying number;
- The date and location where the transaction occurred;
- The identity of the product (*e.g.* crude oil);
- The name of the client;
- The source of the product (*e.g.*, name of vessel, flight number of airline); and,
- If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

### MAJOR EQUIPMENT RECORDS

Records for each major piece of equipment used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work, identifying who performed the service and when.

### RECORDS OF GAUGING PROCEDURES

The Customs-approved gauger must maintain complete and up-to-date copies of all approved gauging procedures, calibration methods, etc., and must document the procedures that each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

### GAUGING RECORDS

The Customs-approved gauger must identify each transaction by transaction record number (see 19 CFR 151.13(h)(2)(i)) and must maintain all information or data (such as temperatures, etc.) associated with each Customs-related gauging transaction. Each gauging record (*i.e.*, the complete file of all data for each separate transaction) must be dated and initialed or signed by the staff member(s) who did the work.

### GAUGING REPORTS

Each gauging report submitted to Customs must include:

- The name and address of the Customs-approved gauger;
- A description and identification of the transaction, including its unique identifying number;
- The designations of each gauging procedure used;
- The gauging report itself (*i.e.*, the quantity of the merchandise);
- The date of the report; and,
- The typed name and signature of the person accepting technical responsibility for the gauging report (*i.e.*, an approved signatory).

### REPRESENTATION OF CUSTOMS-APPROVED STATUS

Commercial gaugers approved by Customs must limit statements or wording regarding their approval to an accurate description of the commodities for which approval has been obtained. Use of terms other than those appearing in the notice of approval (see 151.13(g)) is prohibited.

### SUBCONTRACTING PROHIBITED

Customs-approved gaugers must not subcontract Customs-related work to non Customs-approved gaugers or non Customs-accredited laboratories, but may subcontract to other facilities that are Customs approved or accredited and in good standing.

## HOW CAN A LABORATORY OR GAUGER HAVE ITS ACCREDITATION OR APPROVAL SUSPENDED OR REVOKED OR BE REQUIRED TO PAY A MONETARY PENALTY?

### GENERAL

The Director may immediately suspend or revoke the accreditation or approval of a laboratory or gauger (referred to as "facility" below) only in cases where the facility's actions are intentional violations of any Customs law or when required by public health or safety. In other situations where the Director has cause, the Director will propose the suspension or revocation of a facility's accreditation or approval or propose a monetary penalty and provide the facility with the opportunity to respond to the notice of proposed action.

### SPECIFIC GROUNDS FOR SUSPENSION, REVOCATION, OR ASSESSMENT OF A MONETARY PENALTY

A facility's accreditation or approval may be suspended or revoked, or a monetary penalty may be assessed because:

- The selection was obtained through fraud or the misstatement of a material fact by the laboratory or gauger;
- The facility, a principal of the facility, or a person the port director determines is exercising substantial ownership or control over the facility operation is indicted for, convicted of, or has committed acts which would, under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or would reflect adversely on the business integrity of the applicant. In the absence of an indictment, conviction, or other legal process, a port director must have probable cause to believe the proscribed acts occurred;
- Staff facility personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation;
- The facility fails to operate in accordance with the obligations of §151.12(c) or §151.13(g), respectively;
- A determination is made that the facility is no longer technically or operationally proficient at performing the approved methods of analysis or measurement for Customs purposes;
- The facility fails to remit to Customs, the Accounts Services Division, within the 30 day billing period the associated charges assessed for the accreditation or approval and the balance of the fixed accreditation or approval fee;
- The facility fails to maintain its bond; or
- The facility fails to remit to Customs, the Accounts Services Division, within the 30 day billing period the fixed reaccreditation or reapproval fee; or
- The facility fails to remit any monetary penalties assessed under §151.12 (k) or §151.13(i), respectively.

### ASSESSMENT OF MONETARY PENALTIES

The assessment of a monetary penalty under sections 151.12 or 151.13, may be in lieu of, or in addition to, a suspension or revocation of accreditation or approval. The monetary penalty may not exceed \$100,000 per violation and shall be assessed and mitigated pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of:

- Any loss of revenue, in cases where the laboratory or gauger intentionally falsified the analysis or gauging report in collusion with the importer; or,
- Liquidated damages assessed under the facility's Customs bond.

### NOTICE

When a decision to suspend, or revoke accreditation or approval, and/or to assess a monetary penalty is made, the Director will immediately notify the facility in writing of the decision indicating whether the action is effective immediately or is proposed.

### IMMEDIATE SUSPENSION OR REVOCATION

Where the suspension or revocation of accreditation or approval is immediate, the Director will issue a notice of determination which will state the specific grounds for the immediate suspension or revocation and advise the facility that it may administratively appeal the determination to the Assistant Commissioner within 30 calendar days of the notice of determination. The facility may not perform any Customs-accredited or approved functions during the appeal period.

### PROPOSED SUSPENSION, REVOCATION, OR ASSESSMENT OF MONETARY PENALTY

#### PRELIMINARY NOTICE

Where the suspension or revocation of accreditation or approval, and/or the assessment of a monetary penalty is proposed, the Director will issue a preliminary notice of action which will state the specific grounds for the proposed action and advise the facility that it has 30 calendar days to respond. The facility may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The facility may also ask for a meeting with the Director or his designee to discuss the proposed action. The facility may continue to perform functions requiring Customs-accreditation or approval during this 30-day period. If the facility does not respond to the preliminary notice, a notice of adverse determination will be issued by the Director after 30 calendar days of receipt of the preliminary notice. If the facility files a timely response, then the Director, within 30 calendar days of receipt of the response, will issue a notice of determination. If this determination is adverse to the facility, a notice of adverse determination, will be issued by the Director after 30 calendar days of receipt of the response.

### NOTICE OF ADVERSE DETERMINATION

A notice of adverse determination will state the action being taken, specific grounds for the determination, and advise the facility that it may administratively appeal the adverse determination to the Assistant Commissioner, in accordance with 151.12(k)(3) or 151.13(i)(3). The facility may not continue to perform any functions requiring Customs accreditation or approval upon receiving a notice of adverse determination that its accreditation or approval has been suspended or revoked.

### ADMINISTRATIVE APPEAL

A Customs-accredited laboratory or Customs-approved gauger receiving an adverse determination from the Director that its accreditation or approval has been suspended or revoked, and/or that it has been assessed a monetary penalty may file an administrative appeal to the Assistant Commissioner, Office of Field Operations within 30 calendar days of the notice of determination. If the facility does not file an administrative appeal, the determination made by the Director will become a final agency decision which will be communicated to the facility by a notice of final action issued 30 days after the notice of determination. If the facility does file a timely appeal, then the Assistant Commissioner, within 30 calendar days of receipt of the appeal, will make a final agency decision regarding the facility's suspension or revocation of accreditation, and/or assessment of a monetary penalty. If the final agency decision is adverse to the facility, the decision will be communicated to the facility by a notice of final action. Any notice of adverse final action will state the action taken, the specific grounds for the action, and advise the laboratory that it may choose to:

- If suspended or revoked, submit a new application to the Director after waiting 90 days from the date of the Director's notice of final action; or
- File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days after the issuance of the Director's notice of final action.

### PUBLICATION

Any adverse final agency decision will be communicated to the public by a publication in the *Federal Register* and *Customs Bulletin*, giving the effective date, duration, and scope of the decision.

What Every Member of the  
Trade Community Should Know About:

# *Classification of Sets Under the HTS*



An Advanced Level  
Informed Compliance Publication of the  
U.S. Customs Service

September, 1999

**NOTICE:**

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

*Publication History*

*First Issued: September, 1999*

**PRINTING NOTE:**

This publication was designed for electronic distribution via the Customs Electronic Bulletin Board and Customs World Wide Web site (<http://www.customs.gov>) and is being distributed in a variety of formats. It was originally set up in WordPerfect® 8 using an HP Laserjet 5P printer driver (or Lexmark Optra N printer driver for two sided printing). Pagination and margins in downloaded versions may vary depending upon which word processor or printer you use. If you wish to maintain the original settings, you may wish to download the .pdf version, which can then be printed using the freely available Adobe Acrobat Reader®.

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "**informed compliance**" and "**shared responsibility**," which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on such topics as value, classification, entry procedures, country-of-origin determinations, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Office of Regulations and Rulings has prepared this publication on the *Classification of Sets under the HTS* as part of a series of informed compliance publications relating to the tariff classification of imported merchandise. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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## INTRODUCTION

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs Service. In almost all cases, the goods are required to be "entered," that is, declared to the Customs Service, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs Service. As part of the entry process, goods must be "classified" (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use "reasonable care" to "enter," "classify" and "value" the goods and provide any other information necessary to enable the Customs Service to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Classifying goods is important not only for duty purposes, but also to determine whether the goods are subject to quotas, restraints, embargoes or other restrictions. The act of classifying goods is complex and requires an importer to be familiar with the *Harmonized Tariff Schedule of the United States* (HTSUS), its 99 chapters, rules of interpretation, and notes. A detailed discussion of the HTSUS may be found in a companion publication entitled, *What Every Member of the Trade Community Should Know about Tariff Classification*. Customs valuation requirements are separately discussed in a companion publication entitled, *What Every Member of the Trade Community Should Know about Customs Value*. Both of these publications are available from the Customs Electronic Bulletin Board and Customs World Wide Web pages on the Internet (see the Appendix for information on accessing these sources and obtaining additional Customs Service publications).

This publication concerns the interpretation, by the United States Customs Service, of the General Rules of Interpretation (GRIs) of the Harmonized Tariff Schedule of the United States (HTSUS) as they relate to sets, specifically focusing on GRIs 1, 3(b), and 5. We will also discuss miscellaneous issues dealing with GRI 3(b) sets. However, with regard to GRI 3(b) sets, a detailed discussion of determining the essential character of a set will not be included. A brief review of the principles involved in sets determinations is provided, with illustrative examples from ruling letters, along with what we believe is our best guidance in addressing sets classification matters.

## GRI 1 - SETS CLASSIFIABLE IN *EO NOMINE* PROVISIONS

### GRI 1

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

In certain areas of the HTSUS, sets are specifically mentioned by name. The only requirements which are to be followed when dealing with a GRI 1 set are those mentioned in the particular HTSUS provisions describing the set, relevant chapter and section notes, and the relevant Explanatory Notes (ENs)<sup>1</sup>. Sets may appear in the heading text, such as electric generating sets of heading 8502, HTSUS, or in a subheading text, such as sets of kitchenware of subheadings 8215.10 and 8215.20, HTSUS. For subheading sets, GRI 6 applies GRI 1 by requiring that only subheadings at the same level are comparable. Sets may appear in legal notes, as in chapter 62, note 3, HTSUS, in which are described sets of garments known as suits and ensembles, classified in headings 6203 and 6204, HTSUS. Sets may be mentioned only in the ENs to a particular heading. The rules with regard to GRI 3(b) sets, discussed below, do not apply to GRI 1 sets.

Taking the kitchenware example mentioned above, subheadings 8215.10.00 and 8215.20.00, HTSUS, provide for sets of assorted articles which are described by heading 8215, HTSUS. The relevant provisions are as follows:

*Subheadings 8215.10.00 and 8215.20.00, HTSUS*

<b>8215</b>	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof:
<b>8215.10.00</b>	Sets of assorted articles containing at least one article plated with precious metal.
<b>8215.20.00</b>	Other sets of assorted articles.

Chapter 82, note 3, HTSUS, and EN 82.15 describe the types of sets to be included in heading 8215, HTSUS. See HQ 959713, dated May 6, 1997, for an example of how we classify goods in the sets provisions of heading 8215, HTSUS. In that ruling, we held that barbecue utensils, consisting of a fork, spatula, tongs, and brush, constitute a GRI 1 set under subheading 8215.20.00, HTSUS, as other sets of kitchen or tableware articles.

### **GRI 3(b) SETS**

The provisions involved in this discussion are as follows:

*GRI 3(b)*

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

<sup>1</sup> The Explanatory Notes (ENs) to the Harmonized Commodity Description & Coding System ("Harmonized System") represent the official interpretation of the World Customs Organization (officially known as the Customs Cooperation Council). Although they are neither binding nor considered dispositive, they should be consulted on the proper scope of the Harmonized System. They may provide guidance on the interpretation of the HTSUS and its General Rules of Interpretation (GRIs).

*EN (VIII) to GRI 3(b)*

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

*EN (X) to GRI 3(b)*

For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The term therefore covers sets consisting, for example, of different foodstuffs intended to be used together in the preparation of a ready-to-eat dish or meal.

Examples of sets which can be classified by reference to Rule 3 (b) are:

(1) (a) Sets consisting of a sandwich made of beef, with or without cheese, in a bun (heading 16.02), packaged with potato chips (French fries) (heading 20.04):

Classification in heading 16.02.

(b) Sets, the components of which are intended to be used together in the preparation of a spaghetti meal, consisting of a packet of uncooked spaghetti (heading 19.02), a sachet of grated cheese (heading 04.06) and a small tin of tomato sauce (heading 21.03), put up in a carton:

Classification in heading 19.02.

The Rule does not, however, cover selections of products put up together and consisting, for example, of:

— a can of shrimps (heading 16.05), a can of pâté de foie (heading 16.02), a can of cheese (heading 04.06), a can of sliced bacon (heading 16.02), and a can of cocktail sausages (heading 16.01); or

— a bottle of spirits of heading 22.08 and a bottle of wine of heading 22.04.

In the case of these two examples and similar selections of products, each item is to be classified separately in its own appropriate heading.

(2) Hairdressing sets consisting of a pair of electric hair clippers (heading 85.10), a comb (heading 96.15), a pair of scissors (heading 82.13), a brush (heading 96.03) and a towel of textile

material (heading 63.02), put up in a leather case (heading 42.02):

Classification in heading 85.10.

(3) Drawing kits comprising a ruler (heading 90.17), a disc calculator (heading 90.17), a drawing compass (heading 90.17), a pencil (heading 96.09) and a pencil-sharpener (heading 82.14), put up in a case of plastic sheeting (heading 42.02):

Classification in heading 90.17.

For the sets mentioned above, the classification is made according to the component, or components taken together, which can be regarded as conferring on the set as a whole its essential character.

As EN (X) to GRI 3(b) states, for a group of articles to qualify as a set under GRI 3(b), it must meet three requirements:

(1) consist of at least two different articles which are, *prima facie*, classifiable in different headings;

(1) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(2) be put up in a manner suitable for sale directly to users without repacking.

If these requirements are met, all articles in the set are classified in the provision for the article among them that gives the set its essential character. Because requirements (1) and (3) are more easily determined and success in finding a valid set under GRI 3(b) hinges to a large extent on application of requirement (2), we will limit our discussion to issues involving the language contained therein and not discuss requirements (1) and (3) in this publication.

#### APPLICATION OF "TO MEET A PARTICULAR NEED OR CARRY OUT A SPECIFIC ACTIVITY"

Although the courts have dealt with "sets" issues under the Tariff Schedules of the United States (TSUS), there appear to be no judicial cases under the HTSUS dealing specifically with the "to meet a particular need or carry out a specific activity" requirement.

HQ 953472, dated March 21, 1994 (footwear packaged with printed matter), discussed what constitutes a "particular need" or a "specific activity," using the above-referenced examples in EN (X) to GRI 3(b):

In (1) [EN 3(b)(X)(1), the sandwich in bun packaged with potato chips, and the spaghetti meal] and (2) [EN 3(b)(X)(2), the hair-dressing set], the examples referred to as "sets" share a common trait. The individual components in each example **are used together or in conjunction with another for a single purpose or activity.** In the "spaghetti meal" example, each component may be sold separately and used in a variety of recipes. However, sold together they are clearly intended to be used together for the specific purpose of preparing a single dish. Similarly, the "hairdressing set" is comprised of various articles that may be sold individually for

many purposes. However, taken together they are designed to be used together for a single activity. [Emphasis supplied].

On the other hand, (1) [EN 3(b)(X)(1)] contains two examples where articles put up together are not regarded as "sets," despite the fact that they are related to one another and can be used at the same time. In the "canned goods" example, each can is related by the fact that they all contain food. In addition, it is possible to serve them on the same occasion. One could argue that they meet the specific need of "eating a meal." However, they do not interact with one another so as to comprise a single dish. Therefore, they do not comprise a set.

In the "spirits" example, the two articles are related as they both contain alcohol. Moreover, the wine and liquor may be served together at dinner or at a party. It is possible to argue that they have been packaged together for the specific activity of "social drinking." However, they are not used in conjunction with one another so as to be suitable for a single drink or for use on a specific occasion. Hence, they are not classified as a set.

Therefore, for goods put up together to meet the "particular need" or "specific activity" requirement and thereby be deemed a set, they must be so related as to be **clearly intended for use together** or in conjunction with one another for a single purpose or activity. Applying this language to the merchandise in HQ 953472, we stated that:

In this case, you reason that the shoes and the accompanying literature satisfy the particular need of "having shoes to wear." The individual component articles arguably serve this purpose as they are each related to footwear. However, the shoes and literature do not result in a combination that meets a single need or activity. Rather, the literature serves a promotional or advertising function, while the shoes serve a separate practical purpose. Therefore, these items do not comprise a set.

See HQ 084760, dated October 4, 1989, for a discussion of another example of a collection of items not considered to constitute a set. The article in that ruling, marketed as a Christmas stocking for dogs, contained four types of food products for dogs and a reindeer antler headpiece designed with an elastic strap for attachment to a dog's head. We held that, although packaged together in a sealed stocking, the items were not dedicated to a specific function or a particular need. The dog food, reindeer antlers, and Christmas stocking performed diverse functions. The function of the dog food, feeding canines, was unrelated to the novelty function of the reindeer antlers. Accordingly, the subject merchandise was not properly classifiable as a set under GRI 3(b). Each item was classifiable separately under GRI 1.

HQ 086281, dated March 2, 1990, dealt with the classification of a travel bag containing a wallet, mirror, pen, raincoat, memo pad, umbrella, comb, and calculator with battery. The articles were packaged together for retail sale, and may all have been useful when traveling. However, we stated that the articles were multi-dimensional, used for

very different purposes, and not traditionally used together to meet a particular need or carry out a specific activity. Thus, the items did not constitute a set under GRI 3(b). We note that HQ 086281 was modified by HQ 086890, dated April 16, 1990; however, the modification was unrelated to the GRI 3(b) issue.

As we have stated, there must be a relationship between the articles contained in a group, and such relationship must establish that the articles are clearly intended for use together for a single purpose or activity to comprise a set under GRI 3(b). In HQ 960620, dated August 26, 1997, we classified a glass cake plate attached to a silver-plated steel base and a silver-plated steel trowel as a set. The articles were packaged together in a specifically printed box and were designed to be used together to carry out the specific activity of serving cake.

HQ 081785, dated March 17, 1989, discussed a sauna belt and shorts, made of the same material, designed to promote loss of weight and inches when worn during physical activity. The garments, though of a type sometimes sold by themselves, were put up together to provide a coordinated outfit to be worn during work or play, and were considered to comprise a set.

With regard to the classification of sets using a GRI 3(b) analysis, the reasoning and specific language used in HQ 953472 is straightforward and concise in creating a test for uniformly classifying a group of articles as a set. That ruling emphasized the examples in EN 3(b)(X) to demonstrate the required relationship between the articles of a group. Before it is determined that certain articles meet a particular need or carry out a specific activity and are deemed a set, there must be evidence that they are used together or in conjunction with one another for a single purpose or activity. Although the classification of sets will continue to involve a degree of subjectivity, the requirement that there be compelling evidence of use together will add objectivity to the process and provide greater consistency, and predictability, in the analysis of sets.

**APPLICATION OF "TO MEET A PARTICULAR NEED OR CARRY OUT A SPECIFIC ACTIVITY" TO PROPOSED GRI 3(b) SETS WHICH INCLUDE HOLDERS, CONTAINERS, ETC.**

Based upon an examination of Example 2 in EN (X) to GRI 3(b), it appears that cases, holders, etc., used to store items of a set are not intended to be excluded from the set. Example 2 consists of a pair of electric hair clippers, a comb, a pair of scissors, a brush and a towel of textile material, all of the items put up in a leather case. The example states that the set, including the leather case, is classifiable in heading 8510, HTSUS. However, a review of previous OR&R rulings indicates that, generally, Customs has treated the classification of holders, cases, etc., which were presented as parts of sets, in two ways. In most cases, the holder, case, or other container is included with other articles which clearly meet a particular need or carry out a specific activity; in those cases, the concern has been directed to the propriety of the container and whether it detracts from the classification of all of the articles, in-

cluding the container, as a set. In other cases, however, only the container and one other article are presented for consideration as a set; in these cases, the concern has been focused squarely on the role of the container, jointly with its contents, in meeting a particular need or carrying out a specific activity.

In HQ 084717, dated September 13, 1989 (assorted tools and electrical items in a steel tool box), we stated that:

The third criterion, that the goods consist of articles put up together to meet a particular need or carry out a specific activity, also appears to be satisfied. The tool and connector assortments can be utilized to perform a variety of electrical work. The tool box/cabinet provides convenient storage for the electrician/mechanic. The latching feature and the handle, allow an individual to carry the tool box anywhere he or she may require the use of its contents, whether it be within the home or elsewhere.

HQ 084717 considered the tool box to be a part of the set because it was intended to hold the tools when they are not being used. This ruling is consistent with the conclusion of Example 2 in EN (X) to GRI 3(b) because, as with the relationship between the leather case and the hair-dressing components, the tool box has little to do with the tools performing their specific functions, but stores the tools until they are again used. See HQ 082049, dated June 20, 1989, wherein we held that a vinyl carry bag and aluminum cookware constituted a set.

It is clear from the examples of sets in EN (X) to GRI 3(b) that holders, cases, containers, etc. may be included as components of sets. The question to consider is under what circumstances they may be considered components of sets.

With regard to the rulings just discussed and others holding similarly, it should be noted that the holders, cases, etc., were intended to hold the objects that were part of the set. What may be inferred from this is that a holder, case, etc. imported with a set **should be designed to hold or carry the items which are a part of the set.** In addition, following the reasoning in HQ 953472, the tool box and assorted tools in HQ 084717 were considered to be **intended for use together** to meet the particular need of providing tools to a user in an efficient manner.

Groups of articles with containers which fail to meet both of the criteria emphasized above generally are not classified as sets. For example:

In HQ 957960, dated February 5, 1996 (flavored hard candies packed in glass jars), we stated that:

There is no affinity between the candy and the jar. Although the jar in this instance acts as a holder for the candy, its normal function is to act as an all purpose general household storage jar.

In HQ 087113, dated July 26, 1990 (optical items stored in a carrying case), we stated that:

The carrying case at issue is capable of carrying additional items, so it is not clear whether the case contributes to the specific activity of the merchandise. Therefore, the goods at issue

do not constitute a set put up for retail sale and thus must be classified separately.

In HQ 082213, dated February 13, 1990 (drain cleaning system stored in a tool box), we stated that:

The components packed inside the tool box are put together to carry out a specific activity, i.e., to use water pressure from the faucet to clear sink drains that are blocked. However, the tool box does not contribute to this activity. While the tool box functions as a container for the drain cleaning system, it can also be used for holding other items. This is so because the size of the tool box is larger than would be necessary to serve only as a holder for the drain cleaning system.

These three rulings demonstrate that if a holder or container is not sufficiently related to the items they are holding or storing—that is, neither designed to carry the items nor intended for use with them—then the “particular need” or “specific activity” test of EN (X) to GRI 3(b) is not met and the goods do not constitute sets.

If Customs determines that a holder or container included with other articles is **specifically designed to hold or contain** those articles, such a determination will support the further conclusion that the articles and the holder or container are **intended to be used together**, or in conjunction with one another, to meet a particular need or carry out a specific activity. Characteristics used in determining whether a holder or container is specifically designed to hold or contain the other articles of a claimed set include a comparison between the articles and their holder or container of size, shape, construction, color combination, use, etc. The burden will be on the importer to provide evidence of design characteristics which link the articles to the holder or container. The holder or container need not be form-fitted or otherwise dedicated specifically to holding or carrying the articles imported with it, but it must be a particularly appropriate container and its capacity not appreciably larger than that required to hold or carry the accompanying articles.

For instance, in the rulings just discussed, the glass jar in HQ 957960 was not specifically designed to hold the candies packed inside. The jar was a general purpose jar which was intended to survive the consumption of its contents and which would be subject to numerous uses after importation. In HQs 087113 and 082213, the containers were too large for the items they were to carry and could easily carry additional items. This was evidence that the containers were not specifically designed to hold or contain those articles imported in them.

In HQ 959713, referenced above, covering the golf bag-shaped container with the set of barbecue utensils, we stated that:

\* \* \* the golf bag, which is not specially fitted to hold the barbecue utensils and does not possess any features lending itself to the activity of cooking, may be used for a number of activities, such as the storage of items or as an ornament for a den or sports room. The

barbecue utensils, which are so loosely placed in the golf bag, could easily be taken out of the bag once purchased and stored elsewhere.

Thus, caution must be used with an article or collection of articles placed in a container not of a kind normally sold with the set. Even if the container is an appropriate size for the article or articles placed therein, it does not form a set with the contents when those contents would generally be removed from the container or case, and the container or case would be used separately.

Utilizing a strict interpretation of EN (VIII) and (X) to GRI 3(b) where a potential set includes a container is paramount. Looking to whether the container is designed to hold or contain or is intended to be used with the other set components is instructive. Guidance can be drawn from the EN examples classified as sets, and importers should insure that the three EN requirements of a set are met. Moreover, the essential character criteria should be considered and reasonable care shown in deciding which article provides the essential character of the set.

#### **RELATION OF GRI 5 TO CLASSIFICATION OF SETS**

The provisions involved in this discussion are as follows:

##### **GRI 5**

In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(a) Subject to the provisions of rule 5(a) above, packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

GRI 5 may appear to be relevant to the classification of sets including holders, cases, and other containers. However, based upon the examples in EN (X) to GRI 3(b), holders, cases, containers, etc., may be included as components of GRI 3(b) sets without resort to GRI 5. As has been demonstrated in the rulings listed above, such holders or containers are deemed to merit equal consideration among the items of a proposed set in determining whether the items constitute a set using a GRI 3(b) analysis. Nowhere in GRI 3(b) or in the corresponding ENs does it state that GRI 5 should apply to any holders, containers, etc. of a proposed set. Therefore, with regard to determining whether a proposed set which includes a holder, case or other container constitutes a set, we do not believe that the use of GRI 5, or its embodied principles, is appropriate.

However, it is clear that, where articles imported with a holder, case, or other container have been found to not constitute a set under GRI 3(b), recourse to GRI 5 is proper to determine whether its provisions apply to the container. For instance, in HQ 959713, discussed above, after finding that a miniature golf bag and a set of barbecue utensils (the golf bag serving as a container for the utensils) did not qualify as a GRI 3(b) set, we next performed a GRI 5 analysis concerning the golf bag. In the ruling, we stated that:

It is our position that the golf bag, as it relates to the barbecue utensil set, does not meet the requirements of GRI 5, and therefore may not be classifiable with the barbecue utensil set. Because the golf bag is definitely not specially shaped or fitted to hold the barbecue utensil set, it fails to meet the requirements of GRI 5(a). Also, based upon the design and manufacture of the golf bag, it is obviously suitable for repetitive use. Therefore, the golf bag fails to meet the requirements of GRI 5(b).

Also, we note that the phrase "set of articles" in GRI 5(a) does not refer to GRI 3(b) goods put up in sets for retail sale. Such an interpretation is contradictory to our policy towards GRI 3(b) as discussed above.

#### MISCELLANEOUS ISSUES

##### APPLICATION OF *DE MINIMIS* RULE TO GRI 3(b) SETS

Under the *de minimis* rule, the presence of an extremely minor article may be disregarded in determining whether a group of articles constitutes a set. The *de minimis* rule is not explicitly provided for in GRI 3(b) or in the ENs for GRI 3(b). However, we have dealt with the application of the rule to GRI 3(b) sets in HQ 950466, dated January 6, 1992, and HQ 953472. In HQ 950466, which dealt with, in part, whether a sticker disqualified elastic cord laces (used as a replacement for regular shoe laces to secure athletic shoes about the foot) from constituting a GRI 3(b) set, we stated that:

Under the *de minimis* rule, a component which is merely an incidental or immaterial element of an entire article, does not enhance its value, and has no commercial purpose, is disregarded for classification purposes. *Tuscany Fabrics, Inc. v. United States*, 65 Cust. Ct. 182, 317 F. Supp. 741 (1970), *aff'd*, 59 C.C.P.A. 77, C.A.D. 1043, 454 F.2d 1188 (1972), *cert. denied*, 409 U.S. 845, 34 L.Ed 2d 85, 93 S.Ct 47 (1972). Examining the specific commercial purposes toward which the laces and clips are packaged together as a set, *supra*, it is clear that the addition of the sticker (1) does not enhance the value of the set, (2) is merely incidental to the set, and (3) has no viable commercial purpose legitimately connected to the set. The sticker is considered *de minimis*; therefore, it is ignored when determining that the entire package is a set for retail sale.

However, in HQ 962073, dated August 19, 1998, which dealt with whether two sewing kits, one containing a key chain and the other con-

taining an emery board, qualified as GRI 3(b) sets, we applied the language in HQ 950466 and stated that:

Unlike the sticker in HQ 950466, the key chain and the emery board contained within the respective sewing kits are not incidental to the kits. Both items possess a utilitarian purpose which is no less useful than any of the remaining items of the kits. Although the key chain and emery board do not contribute to the function of sewing, they do possess other unrelated commercial purposes (i.e., holding keys, nail manicure). Therefore, we find that the *de minimis* rule is inapplicable in determining whether the subject sewing kits constitute GRI 3(b) sets.

Based upon the above analysis, it is our position that the sewing kits fail requirement (b) of Explanatory Note 3(b)(X), and therefore do not constitute GRI 3(b) sets.

Therefore, for a good to qualify as *de minimis* when determining if a group of articles qualify as a GRI 3(b) set, the following test must be met: the addition of the good (1) does not enhance the value of the set, (2) is merely incidental to the set, and (3) has no viable commercial purpose legitimately connected to the set. If this test is not met, an extraneous article will detract from the specific need or particular activity addressed by the group of articles, thereby disqualifying the articles as a set.

#### SETS INCLUDING ONE OR MORE TEXTILE ARTICLES

As stated in our GRI 1 discussion, some textile sets are specifically mentioned in particular headings. They must be imported together. See HQ 956298, dated March 9, 1995, which dealt with two-piece garment sets determined to be track suits classifiable pursuant to GRI 1. However, other sets of textile garments, which are not provided for as GRI 1 sets, must be individually classified in their respective headings even if put up in sets for retail sale. This principle is stated in section XI, note 13, HTSUS, and discussed in HQ rulings such as HQ 955332, dated March 9, 1994.

Virtually all textiles and apparel are subject to quota and/or visa restrictions, under a program administered through the Department of Commerce with the assistance of the Customs Service. Exec. Order. Nos. 11651, 37 F.R. 4699 (1972), and 12475, 49 F.R. 19955 (1984). Where a textile article is part of a set found to be a GRI 3(b) set put up for retail sale, the textile article remains subject to quota and/or visa requirements, regardless of where the set is classified. 54 F.R. 35223 (1989). See e.g., HQ 087180, dated January 11, 1991, covering a hand-held sewing device ("Mini Mender") packaged with a spool of thread, extra needle, needle threader, and set of instructions. Even though the items were held to constitute a set, and the spool of thread was a constituent part of this set for classification and duty purposes, the thread nevertheless fell within a textile category designation and was subject to visa and quota requirements.

Where classification as a set is substantiated, and the set contains an article of textile or apparel, there are two instances where such article is not subject to quota and/or visa requirements: GRI 1 sets of heading 9605, HTSUS, or sets of chapter 95, HTSUS.

As to sets of heading 9605, HTSUS, HQ 952195, dated December 3, 1992, dealt with two types of sewing kits. Each kit consisted of various colors of polyester thread, needles, buttons, and safety pins. One kit was presented inside a hard plastic case or matchbook suitable for travel. The other kit was placed inside a travel case after importation. The kit imported in the travel case was classifiable as a GRI set in heading 9605, HTSUS, which provides for travel sets for personal toilet, sewing, or shoe or clothes cleaning. In that case, the thread was not subject to quota and visa requirements. The sewing kit imported without the case was not eligible for classification as a GRI 1 set of heading 9605, HTSUS. It was held to be a GRI 3 set, with the essential character imparted by the sewing thread, classifiable in subheading 5508.10.00, HTSUS, with the thread subject to quota and visa requirements. HQ 954815, dated January 31, 1994, confirmed that:

Any component of a GRI 3(b) set that would require a visa if imported alone still requires a visa even though it is merely a component of a proper set. This is not the case where a component requiring a visa if imported alone is a component of a traveling set under heading 9605, HTSUSA.

For sets of chapter 95, HTSUS, in HQ 086297, dated January 26, 1990, a bedtime doll set, consisting of a doll and various accessories including a cotton terry cloth towel, was classified in subheading 9502.10.40, HTSUS, as a GRI 3(b) set put up for retail sale, with the essential character imparted by the doll. The cotton towel in the doll set, because it was considered to be a toy, was not subject to separate visa or quota requirements. See HQ 088663, dated June 3, 1991, in which a toy wrestling set, including a textile headband, was treated in a similar manner.

#### **SETS CLASSIFIED IN SPECIFIC OR COMPOUND RATE OF DUTY PROVISIONS**

There may be a variety of articles in a given set, which individually classified, would take various duty rates, *ad valorem*, specific or compound. When classified as a set, those articles fall in the provision where the article providing the set's essential character is classified. In general, Customs believes that where a specific or compound rate is thus applied to a set, each article rather than each set counts as one item receiving a specific or compound rate of duty. In HQ 088521, dated May 13, 1991, certain crayons an eraser and sharpener were imported together in one box. They were found to be a set under GRI 3(b), and the crayons provided the set's essential character. The applicable duty rate was 5.5 cents per gross plus three-fourths percent *ad valorem*. Customs found that this compound rate should be applied to each crayon, eraser and sharpener in the box to reach the 144 items in a gross. It is impor-

tant to check the relevant General Notes, Additional U.S. Notes, and Statistical Notes in the HTSUS when calculating duty rates and reporting the number of sets or pieces in a set for entry purposes.

What Every Member of the  
Trade Community Should Know About:

# *Marking Requirements for Wearing Apparel*



An Advanced Level  
Informed Compliance Publication of the  
U.S. Customs Service

September, 1999

### NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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*First Issued: September, 1999*

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On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*," which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on such topics as value, classification, entry procedures, country-of-origin determinations, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on *Marking Requirements for Wearing Apparel* as part of a series of informed compliance publications advising the trade community of Customs requirements. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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## COUNTRY OF ORIGIN MARKING FOR APPAREL

### COUNTRY OF ORIGIN MARKING: GENERAL REQUIREMENTS

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the good is the product. The evident purpose is to mark the good so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297 at 302 (1940).

Section 2423 of Pub. Law 106-36, (effective June 25, 1999) amended section 304 of the Tariff Act of 1930 (19 U.S.C.1304) by adding a new subsection which exempts certain silk articles from the marking requirements of 19 U.S.C. 1304(a) and (b). As a result of this amendment, the country of origin marking requirements do not apply to shawls, scarves, mufflers, mantillas, and veils containing 70 percent or more by weight of silk or silk waste classified under 6214.10.10 Harmonized Tariff Schedule of the United States, as in effect on January 1, 1997, (HTSUS), or to articles provided for in heading 5007 of the HTSUS as in effect on January 1, 1997 (woven fabrics of silk or silk waste).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain.

### DETERMINING COUNTRY OF ORIGIN FOR WEARING APPAREL

United States Customs laws require that all wearing apparel articles produced abroad be marked for country of origin. The specific rules for determining origin can be found in Section 102, Customs Regulations (19 CFR 102). Guidance on country of origin determination for wearing apparel can be found in the United States Customs Service Informed Compliance Publication "*What Every Member of the Trade Community Should Know About: Textile & Apparel Rules of Origin*" available on Customs' Home Page on the Internet's World Wide Web ([www.customs.gov](http://www.customs.gov)).

### MARKING REQUIREMENTS FOR WEARING APPAREL

All wearing apparel items must be marked with the name of the country of origin by means of a fabric label unless a precedent exists which has ruled in favor of another form of marking. Following are the general rules for locating such a fabric label on upper and lower body garments.

In the case of garments that cover the upper torso such as shirts, blouses, coats, sweaters, dresses and similar apparel, country of origin marking must be placed on the "inside center of the neck midway between the shoulder seams or in that immediate area" as ruled by Customs in T.D. 54640 (6).

"Trousers, slacks, jeans and similar wearing apparel must be marked by means of a permanent label affixed in a conspicuous location on the garment, such as the inside of the waistband" as ruled by Customs in T.D. 71-264(3). This principle would apply as well to shorts, skirts and similar garments.

#### SPECIAL MARKING RULINGS

*Reversible garments* fall within the exception to the aforementioned neck marking requirements. A reversible front to back ladies tank top was found to be properly marked by means of permanent sewn-in label on the inside lower side seam and a hang tag securely attached at the neck in HQ 733890 dated December 31, 1990. And, in HQ 734692 dated October 31, 1992 it was ruled that a reversible jacket could be marked with a sewn-in label at the inside pocket in combination with a hang tag attached to the front zipper closure.

*Men's or ladies' two or three piece suits* may be marked in the jacket of the suit if bought and sold as a unit when all pieces are made in the same country as ruled in ORR Ruling 331-69 dated August 19, 1969.

*Men's dress shirts packaged in transparent poly bags* should be marked at the neck so the ultimate purchaser can easily read the label without opening the packaging. See HQ 732374 dated July 7, 1989.

*Garment and belt made in the same country and imported and sold together as a unit*—the garment only may be marked, if found to reasonably indicate to the ultimate purchaser the country of origin of the belt as well. See HQ 734222 dated December 9, 1991 and ORR Ruling 331-69 dated August 19, 1969.

*Gloves* may be marked only with a hang tag instead of sewn-in labels or ink stamps, as long as the country of origin is on the front of the hang tag in reasonable proximity to the glove size as ruled in HQ 731061 dated July 28, 1988. Customs has also ruled that cloth work or garden gloves may be marked to indicate the country of origin by means of a heavy paper folder which securely fastens the gloves together, as long as the country of origin is shown in a legible and conspicuous manner; see T.D. 75-222 dated September 4, 1975.

*Neckties and scarves* which are accessory articles rather than wearing apparel with a neck opening must be marked with a sewn-in label in a conspicuous place on the article, see HQ 559620 dated May 17, 1996. However, scarves containing 70 percent or more by weight of silk or silk waste classified under 6214.10.10 are not subject to 19 U.S.C. 1304 marking requirements. (Sec. 2423 of Pub. Law 106-36, June 25, 1999)

*Textile belts* may be marked with a hang tag in a conspicuous place and in a manner which assures that unless deliberately removed will re-

main on the article until it reaches the ultimate purchaser as ruled in HQ 733139 dated April 6, 1990.

*Tie or scarf sold as an accessory to an accompanying blouse, all made from the same fabric and design, imported, sold and intended to be worn exclusively together*—the tie or scarf loses its separate identity when combined and sold with the blouse. As such, only the blouse requires marking in accordance with HQ 729594 dated August 12, 1986 and HQ 733099 dated May 30, 1990.

*Wearing apparel sold without normally being opened by the ultimate purchaser in sealed packages* may be marked on disposable containers or holders of imported merchandise in accordance with 19 CFR 134.24(d)(2). See HQ 732572 dated June 7, 1990 regarding infant socks packed in a sealed disposable clear plastic bag with a cardboard advertising card marked for country of origin; HQ 733796 dated June 10, 1991 regarding disposable one-time use undergarments packed in heat sealed polybags with a paper label insert marked with country of origin; and HQ 730910 dated September 6, 1988 regarding baby booties sold in disposable packages marked for country of origin.

*Scarves in which the fabric is formed in one country, followed by design, printing or dyeing in another country*—acceptable country of origin marking must indicate country where fabric is formed, see HQ 959827 dated October 25, 1996. However, scarves containing 70 percent or more by weight of silk or silk waste classified under 6214.10.10 are not subject to 19 U.S.C. 1304 marking requirements. (Sec. 2423 of Pub. Law 106-36, June 25, 1999)

#### MARKING WHEN NAME OF COUNTRY OR LOCALITY OTHER THAN COUNTRY OF ORIGIN APPEARS

19 CFR 134.46 states "in any case in which the words 'United States,' or 'American,' the letters 'U.S.A.,' any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by 'Made in,' 'Product of,' or other words of similar meaning." [emphasis added]

Customs has determined that the following examples of articles marked with non-origin statements trigger the requirements of 19 CFR 134.46, as they may mislead or deceive the ultimate purchaser. "A product of ABC Corp., Chicago, Illinois", "Manufactured and Distributed by ABC, Inc., Denver, Colorado", "Manufactured by ABC Corp., California, U.S.A.", "produced for ABC Corp., Scotch Plains, N.J.", "Designed in USA", "Made for XYZ Corp., California, USA", or "Distributed by ABC Inc., Colorado, USA". Customs has determined that statements such as

"Printed in USA", or names of locations which are part of the design of an article do not trigger the requirements of 19 CFR 134.46.

#### **TEXTILE FIBER IDENTIFICATION ACT AND WOOL PRODUCTS LABELING ACT**

Pursuant to section 141.113, Custom Regulations (19 C.F.R. 141.113), textile and apparel articles imported into the United States are required to be marked or labeled pursuant to the Textile Fiber Products Identification Act (15 U.S.C. 70) and the Wool Products Labeling Act (15 U.S.C. 68). These acts are enforced by the Federal Trade Commission (FTC). The following information in English must be included for marking or labeling purposes:

- Fiber content, by percentage in descending order by weight, using generic fiber names
- Fiber names approved by the FTC or by the International Organization for Standardization (ISO) may be used. For example, either spandex (an FTC-approved name) or elastane (an ISO-approved name) may be used to name the same fiber.
- Approved fiber names may be modified by other truthful, descriptive words, for example, "pashmina cashmere" or "micro-fiber polyester."
- Trademarked names can be used in conjunction with generic fiber names, for example, "Lycra® Spandex" or "Tencel® Lyocell," but trade names alone do not satisfy the fiber identification requirement.
- The hair of new "hybrid" wool-bearing animals may be identified with the animal name, such as "cashgora hair" or "paco-vicuna hair."
- The fiber content may be stated on the reverse side of a label, as long as the information is readily accessible. The disclosure "fiber content on reverse side" is no longer required.
- Fibers that weigh less than 5 percent of the total fiber weight should not be identified by name unless they have a definite functional significance when present in that amount. The functional significance need not be stated on the label. For example, if a product is 3% spandex, the label may say "3% spandex," without also stating "for elasticity." If the fiber does not have functional significance at the level present in the product, however, it should be identified as simply "3% other fiber."
- The name of the country of origin of the product
- Country of origin must be disclosed on the front side of a label on the inside center of the neckline in a garment with a neckline. For other textile products, it must be on the front of a label in a conspicuous place.
- The name of the importer, distributor, retailer, or foreign manufacturer
- Importers, distributors, and retailers may use RN numbers or WPL numbers issued by the FTC instead of their names.

- Only companies residing in the U.S. can obtain and use RN numbers. Foreign manufacturers may use either their name or the RN or WPL number of a U.S. importer, distributor, or retailer directly involved with the distribution of the goods.
- The responsible firm may be identified by its trademark name, provided that the trademark name has been registered with the U.S. Patent Office and a copy of the trademark registration has been furnished to the FTC prior to its use. Trademarked brand names may not be used to satisfy this requirement.

NOTE: The FTC is also responsible for enforcing the Trade Regulation Rule Concerning the Care Labeling of Textile Wearing Apparel, 16 C.F.R. Part 423, which requires a permanent label that provides care instructions on all wearing apparel, unless there is an exemption (e.g., gloves).

For more information about these requirements, companies may contact the Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC Website at [www.ftc.gov](http://www.ftc.gov) provides comprehensive information on FTC rules and regulations for the labeling of textile products. A textile telephone information system is available at 202-326-3553.

What Every Member of the  
Trade Community Should Know About:

# *Fiber Trade Names and Generic Terms*



An Advanced Level  
Informed Compliance Publication of the  
U.S. Customs Service

November, 1999

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The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on **Fiber Trade Names and Generic Terms** as part of a series of informed compliance publications regarding the classification of merchandise. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

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STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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## FIBER TRADE NAMES AND GENERIC TERMS

## INTRODUCTION

The Textile Fiber Products Identification Act (15 U.S.C. 70) requires that certain textile products be labeled with, among other things, the textile fiber content in generic terms. It is the responsibility of the importer to determine the proper generic term for a given fiber, based on the chemical definitions of the generic terms. The chemical definitions can be found in Title 16, Code of Federal Regulations, Section 303.7 (16 CFR 303.7), titled "Generic names and definitions for manufactured fibers."

Following is a list compiled by Customs through ruling requests and other documentation, of fiber trade names and their corresponding generic terms. This list is neither exhaustive nor complete. It is merely an informal compilation of trade names/generic terms which Customs has accumulated over the years based on submissions from a variety of sources. Customs has made a reasonable effort to research and identify with an asterisk ("\*"), those terms which are trademarked. However, despite this reasonable effort, there may be terms in this document which we could not locate or identify as trademarked. The reader is advised to check with the U.S. Patent and Trademark Office for further information with respect to specific terms.

Customs will periodically update this list. We request that any information regarding updates, corrections, additions, or the like, be sent to our New York office at the following address:

U.S. Customs Service,  
National Commodity Specialist Division,  
6 World Trade Center,  
New York, NY 10048

Attn: NIS Textiles

A more complete list of trademarked fiber trade names may be found in the 7<sup>th</sup> Edition of the *2000 World Directory of Manufactured Fiber Producers*, a publication of the American Fiber Manufacturers Association, Inc. They may be contacted at the following address:

1150 Seventeenth Street, NW, Suite 310  
Washington, D.C.

## CURRENT FTC-APPROVED GENERIC TERMS

Acetate  
Acrylic  
Alginate  
Anidex  
Aramid  
Azlon  
Carbon  
Chlorofibre

Cupro  
Elastane  
Elastodiene  
Elastoester  
Fluorofibre  
Glass  
Lastrile  
Lyocell

Metal Fibre	Polypropylene
Metallic	Rayon
Modacrylic	Rubber
Modal	Saran
Novoloid	Spandex
Nylon	Sulfar
Nytril	Triacetate
Olefin	Vinal
PBI	Vinylal
Polyamide	Vinyon
Polyester	Viscose
Polyethylene	

#### LIST OF FIBER TRADE NAMES WITH GENERIC FIBER NAME

The following is a list of the fiber trade name and the generic fiber name:

Note: Some companies use certain trade names to refer to more than one fiber. Hence in this list some trade names are associated with more than one generic term.

Fiber Name	Generic	Fiber Name	Generic
A-Tell	Polyester	Akryl	Acrylic
Abestron	Asbestos	Akulene	Polyester
Absorbit*	Rayon	Akulon	Nylon
ACE	Nylon	Alane	Olefin
Acelba	Rayon	Alastra	Rayon
Acele	Rayon	Albene	Acetate
Acele	Acetate	Albula	Rayon
Aceta	Acetate	Algil	Modacrylic
Acetat IPS	Acetate	Alginate*	Azlon
Acetovis	Rayon	Alistran	Metallic
Acribel*	Acrylic	Alkathene	Olefin
Acrilan*	Acrylic	Alkvalon	Nylon
Acrolon	Acrylic	Alon	Rayon
Acrybel	Acrylic	Alton	Acetate
Acrylast	Acrylic	American Bemberg	Rayon
Actionwear*	Nylon	American	Olefin
Aeress	Modacrylic	Amilan	Nylon
Aerocor	Glass	Amplum	Rayon
AeroRove	Glass	Anavor	Polyester
Agilon	Nylon	Anid	Nylon
Agno	Rayon	Anil	Nylon
Agro	Rayon	Anilana	Acrylic
Agrolam	Rayon	Anim/8	Anidex
Airco Vinal	Vinal	Anso-tex*	Nylon

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
Anthella	Rayon	Ayrlyn	Nylon
Antherta	Rayon	Bale-lok	Olefin
Antron*	Nylon	BAR	Rayon
Anywear	Acrylic	Beauknit	Nylon
Arazole	PBI	Beauknit	Rayon
Ardil	Azlon	Beauknit	Polyester
Arenka	Aramid	Belastraw	Rayon
Argentea	Rayon	Belimat	Rayon
Ariloft*	Acetate	Bembella	Rayon
Aristocrat	Rayon	Bemberg*	Rayon
Arma Flisca	Rayon	Bensilkie	Rayon
Arma Lamo	Rayon	Beslon	Acrylic
Armon	Rayon	Beta	Glass
Arnel*	Triacetate	Bexan	Vinyon
Artilana	Rayon	Bexan	Saran
Asahi	Rayon	Bi-Lof*	Acrylic
Astralene-C	Polyester	Bifil	Nylon
Astralon-C	Polyester	Bijohai	Rayon
Astralon-C	Nylon	Bio-Fresh*	Acrylic
Astroloft	Nylon	Biokryl*	Acrylic
Astrolon	Nylon	Blackbird	Rayon
Astrolure	Nylon	Blanc de Blancs	Nylon
AstroTurf*	Nylon	Blue C	Nylon
Autowine	Olefin	Blue C	Spandex
Avicolor	Acetate	Blue C	Polyester
Avicron	Rayon	Bobina-Perlon	Nylon
Avila	Rayon	Bobina	Rayon
Aviloc	Rayon	Bodana	Rayon
Avisco Super L	Rayon	Bodanita	Rayon
Avisco	Vinyon	Bodannella	Rayon
Avisco	Acetate	Bodanyl	Nylon
Avisco XL	Rayon	Bolta	Saran
Avisco	Rayon	Boltaflex	Saran
Aviscose	Acetate	Boltathene	Olefin
Avisun	Olefin	Bonnel	Acrylic
Avlin	Polyester	Borsten	Vinyon
Avlin	Rayon	Breda	Rayon
Avril	Rayon	Bredanese	Rayon
Avron	Rayon	Brenka	Rayon
AVXL	Rayon	Brenkona	Rayon

Fiber Name	Generic	Fiber Name	Generic
Briglo	Rayon	Celara	Acetate
Bristrand	Vinyon	Celarandom	Acetate
Britbem	Rayon	Celaspun	Acetate
Britenka	Rayon	Celastraw	Acetate
BX	Saran	Celatow	Acetate
C-cumuloft nylon	Nylon	Celatress	Acetate
C-nylon	Nylon	Celaweb	Acetate
C-chemstrand nylon	Nylon	Celcos	Acetate
C-cadon nylon	Nylon	Celebrate*	Acetate
C-polyester	Polyester	Celechrome	Acetate
C.I.L	Nylon	Celecloud	Acetate
C.S. Yarn	Rayon	Cellestron	Acetate
Cadon	Nylon	Celltate	Acetate
Calyx	Rayon	Celon	Nylon
Camalon	Nylon	Celta	Rayon
Cantona	Rayon	Cetea	Rayon
Cantrece	Nylon	Chadolene	Olefin
Capilene	Polyester	Chadolon	Nylon
Capima*	Nylon	Chalkelle	Rayon
Caprolan*	Nylon	Chardonize	Rayon
Captiva*	Nylon	Chemfit	Nylon
Caraloft	Acrylic	Chemline	Nylon
Carawisp	Acrylic	Chemlux	Nylon
Cargan	Azlon	Chemstrand	Polyester
Cargau	Azlon	Chemstrand	Nylon
Carolan	Acetate	Chemstrand	Acrylic
Casein	Azlon	Cheviot	Rayon
Casenska	Azlon	Chevisol	Rayon
Cashmilon*	Acrylic	Chinlon	Nylon
Caslen	Azlon	Chinsang	Rayon
Casolana	Azlon	Chlorin	Vinyon
Celacloud	Acetate	Chlorin	Saran
Celacrimp	Acetate	Chromeflex	Metallic
Celafibre	Acetate	Chromspun*	Acetate
Celafil	Acetate	Cisalfa	Rayon
Celaire	Acetate	Civona	Rayon
Celaloft	Acetate	Cleerspan*	Spandex
Celanese*	Acetate	Clorene	Saran
Celanese*	Nylon	Colacril	Acrylic
Celaperm	Acetate	Colcessa	Rayon

Fiber Name	Generic	Fiber Name	Generic
Colcord	Rayon	Crinex	Nylon
Colnova	Rayon	Crinofil	Rayon
Colomat	Rayon	Crinol*	Rayon
Coloray	Rayon	Crinovyl	Vinyon
Colorsealed	Rayon	Crispella	Rayon
Colorspun	Rayon	Cronelka	Rayon
Colva	Rayon	Crylor*	Acrylic
Colvadur	Rayon	Crystalon	Rayon
Colvalon	Rayon	Cumuloft	Nylon
Comfort Fiber	Polyester	Cupersil	Rayon
ComFortrel	Polyester	Cupioni	Rayon
Comiso	Rayon	Cupracolor	Rayon
Comymex	Rayon	Cupralan	Rayon
Conex	Aramid	Cuprama	Rayon
Conomet	Metallic	Cuprama TX	Rayon
Contro	Rubber	Cuprel	Rayon
Conyma	Rayon	Cupresa	Rayon
Coosa Pines	Rayon	Cuprifil	Rayon
Cordamey	Rayon	Cupro*	Rayon
Cordenka	Rayon	Cuprussah	Rayon
Cordulla	Rayon	Curel	Spandex
Cordura*	Nylon	Cusio	Rayon
Cordura*	Rayon	Cycloset	Acetate
Corval	Rayon	Dacron*	Polyester
Corvala	Rayon	Daifuki	Rayon
Corvinair	Rayon	Daiwabo	Rayon
Cour Pleta	Acetate	Danufil*	Rayon
Courlene-Duracol	Olefin	Danulon	Nylon
Courlene	Acetate	Daplan	Olefin
Courlene-PY	Olefin	Daran	Saran
Courtelle*	Acrylic	Darleen	Rubber
Cova	Rayon	Darlspan	Spandex
Covington	Rayon	Darvan	Nytril
Cremona	Vinal	Dayan	Nylon
Crepeset*	Nylon	Decora	Rayon
Crepesly	Rayon	Dederon	Nylon
Crepesoft	Polyester	Deeglass	Glass
Creslan*	Acrylic	Delfion	Nylon
Cresloft*	Acrylic	Delovisca	Rayon
Crimplene	Polyester	Delray	Rayon

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
Deltatovis	Rayon	Eastman 50	Acetate
Delustras	Rayon	Eastman 75	Acetate
Diafil	Rayon	EcoSpun	Polyester
Dicel	Acetate	Eftrelon	Nylon
Dien	Nylon	Efylon	Nylon
Diolen*	Polyester	Ektafil	Polyester
Diorid	Modacrylic	Elana	Polyester
DLP	Olefin	Elbama	Rayon
Dolan*	Acrylic	Elma	Rayon
Dorex	Rayon	Eloma	Rayon
Dorix*	Nylon	Elstrama	Rayon
Dorlon	Nylon	Elura	Spandex
Draka	Saran	Elura	Modacrylic
Dralon*	Acrylic	Embiron	Vinyon
Drapespun	Rayon	Emera	Rayon
Drawinella	Acetate	Emmembrucke	Nylon
Dream Slub	Rayon	Enant	Nylon
Drylene	Olefin	Enbiron	Vinyon
Ducilo	Nylon	Encel	Rayon
Dul-tone	Rayon	Encron	Polyester
Dul-fast	Rayon	Englo	Rayon
Dulesco	Rayon	Enka	Rayon
Dulkona	Rayon	Enka	Nylon
Duon	Olefin	Enkadrain	Nylon
Dura-Stran	Metallic	Enkafort	Glass
Duracel	Nylon	Enkaire	Rayon
Duracol	Rayon	Enkalene	Nylon
Durafil	Rayon	Enkaloft	Nylon
Duraflox	Rayon	Enkalon*	Nylon
Duraglass	Glass	Enkalure	Nylon
Duraspan	Spandex	Enkamat	Nylon
Duraspun*	Acrylic	Enkasa	Azlon
Durel	Olefin	Enkasheer	Nylon
Dureta	Rayon	Enkasonic	Nylon
Dy-lok	Rayon	Enkatron	Nylon
Dylan	Olefin	Enkaturf	Nylon
Dynacor	Rayon	Enkeloft	Nylon
Dynel	Modacrylic	Enkona	Rayon
Eastern	Rayon	Enkrome	Rayon
Eastman	Olefin	Enkron	Rayon

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
Envilon	Vinyon	Fiberfill	Polyester
Erilan	Azlon	Fiberfrax	Glass
Essera*	Olefin	Fiberglas*	Glass
Estera	Acetate	Fibramine	Rayon
Esterweld	Polyester	Fibrana	Rayon
Estochrome	Polyester	Fibranda	Rayon
Estra	Acetate	Fibranne*	Rayon
Estron*	Acetate	Fibravyl*	Vinyon
Etylon	Olefin	Fibrelta	Rayon
Euroacryl	Acrylic	Fibrenka	Rayon
Exlan	Acrylic	Fibri-cord	Olefin
Extrema	Rayon	Fibri-knit	Olefin
Eybel	Rayon	Fibrilawn	Olefin
Fabelmat	Rayon	Fibrilon	Olefin
Fabelta	Nylon	Fibro	Rayon
Fabelta	Rayon	Fibroceta	Acetate
Fair Haven	Rayon	Fibrolane	Azlon
Fairtex	Metallic	Fil de Lyon	Rayon
Famco	Glass	Filatex	Rubber
Featheray	Rayon	Fiocco	Rayon
Fefassea	Nylon	Firestone	Nylon
Feneshield	Glass	Firestone	Saran
Fenilon	Aramid	Firestone	Olefin
Fi-lana	Acrylic	Flaikona	Rayon
Fiber B	Olefin	Flake Slub	Rayon
Fiber C	Acetate	Flatesa	Rayon
Fiber D	Acrylic	Flattsea	Rayon
Fiber E	Rayon	Flimba	Rayon
FiberGlass	Glass	Flisca	Rayon
Fiber HM	Rayon	Flock	Rayon
Fiber K	Spandex	Flox	Rayon
Fiber SM-27	Rayon	Floxaion	Rayon
Fiber T	Modacrylic	Forlion*	Nylon
Fiber 24	Rayon	Fortisan*	Rayon
Fiber 32	Spandex	Fortrel*	Polyester
Fiber 40	Rayon	Frilon	Nylon
Fiber 45	Vinyon	Furlon	Rayon
Fiber 500	Rayon	Furon	Nylon
Fiber 700	Rayon	Garan	Glass
Fiberbrite 2000	Polyester	Garanized	Glass

Fiber Name	Generic	Fiber Name	Generic
Garanmat	Glass	Hol-O-Fil	Rayon
Garon	Glass	Hollofil*	Polyester
Gecesa	Rayon	Hostalen	Olefin
Geilon	Nylon	Hudstat	metallic
Gerfil	Olefin	Hydrofil*	Nylon
Geril	Olefin	Hygram	Rayon
Gevetex	Glass	Hystron	Polyester
Gisolan	Azlon	I G G	Saran
Gizolan	Rayon	Ice berg	Glass
Glantzstoff	Rayon	Iriden	Rayon
Glanzstoff	Nylon	Iridex	Rayon
Glas Floss	Glass	Iridye	Rayon
Glauchauer	Rayon	Isovyll	Vinyon
Glillon	Nylon	IT	Rayon
Glitter	Rayon	Ivorea	Rayon
Glospan*	Spandex	Jackson	Olefin
Goldcres	Olefin	Jedmat	Rayon
Golden Glow	Polyester	Jedpak	Rayon
Golden Touch	Polyester	Jetspun	Nylon
Golden Caprolan	Nylon	Jetspun	Rayon
Graflon	Modacrylic	K.R.P	Rayon
Grillon	Nylon	Kanabian	Vinal
Grilon	Nylon	Kanebian	Vinal
Grip	Polyester	Kanebo	Rayon
Hamlon	Olefin	Kanekalon	Acrylic
Hana	Rayon	Kanekalon	Modacrylic
Harlon	Saran	Kanekalon	Vinyon
Hartford	Rayon	Kanelight	Olefin
Heatherdine	Nylon	Kanelion	Rayon
Heatherloft	Acetate	Kapron	Nylon
Helion	Nylon	Kasema	Rayon
Hemlon	Nylon	Kashimilan	Acrylic
Herculon*	Olefin	Kasilga	Rayon
Hi-Narco	Rayon	Kasymilon	Acrylic
High 10	Rayon	Kelheim	Rayon
Hiralon	Olefin	Kelheimer	Rayon
Hisilon	Nylon	Kelheun H	Rayon
Hizek	Olefin	Kermel*	Aramid
HMA	Aramid	Kevlar*	Aramid
HM-50	Aramid	Kikansei	Rayon

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
Kirklon Superbulk	Nylon	Lavscan	Polyester
Kirksyl	Rayon	Leacril*	Acrylic
Kodel	Polyester	Lektroset	Rayon
Kodofill	Polyester	Lenzella	Rayon
Kodosoff	Polyester	Lenzesa	Rayon
Kohorn	Rayon	Lilion*	Nylon
Kojin	Rayon	Lirelle	Rayon
Kolorbon	Rayon	Lo-pic	Olefin
Konex	Aramid	Loft-set	Nylon
Koplon	Rayon	Loftgard	Polyester
Koseiseide	Azlon	Loftura*	Acetate
Krispglo	Rayon	Loktite	Olefin
Kuralon	Vinal	Lonbell	Rayon
Kurare	Rayon	Lonzona	Acetate
Kurehabo	Rayon	Lowland	Rayon
Kurehalon	Saran	Lucisa	Rayon
Kuremona	Vinal	Luftura	Acetate
Kuseta	Rayon	Lurex	Metallic
Kutasa	Rayon	Lus-trus	Polyester
Kynar	Polyester	Lus-trus	Olefin
Kynol	Novoloid	Lus-trus	Nylon
Lacisana	Rayon	Lus-trus	Saran
Lactofil	Azlon	Lusterloft	Nylon
Lactron	Rubber	Lustrafil	Rayon
Lambeta	Rayon	Lycra*	Spandex
Lambeth	Olefiin	Madam Butterfly	Rayon
Lame	Metallic	Makrofil	Rayon
Lamita	Rayon	Makrolan	Acrylic
Lamo	Rayon	Malora	Metallic
Lanacryl	Acrylic	Manyro	Vinal
Lanalpha	Rayon	Marena	Azlon
Lanese	Acetate	Marenka	Azlon
Lanital*	Azlon	Marimusume	Rayon
Lanon	Polyester	Marispun	Acetate
Lansil	Acetate	Marvess*	Olefin
Lanusa	Rayon	Matankanese	Rayon
Laselon	Polyester	Matapoint	Rayon
Lastex	Rubber	Matenka	Rayon
Lastex S	Spandex	Matenkona	Rayon
Laton	Rubber	Matesa	Rayon

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
Matte Touch	Polyester	MX6020	Polyester
Mattesco	Rayon	Mylar	Metallic
Mawus-M	Polyester	N fiber	Rayon
Mawus-R	Polyester	Nailon	Nylon
Measle Yarn	Rayon	Narco	Rayon
Melkwol	Azlon	Narcon	Rayon
Meraklon*	Olefin	Narene	Rayon
Merinova	Azlon	Narene	Polyester
Merkalon	Olefin	National	Saran
Meryl*	Rayon	National	Olefin
Metlon	Metallic	National	Nylon
Meubalese	Acetate	Nefa-perlon	Nylon
Mewlon	Vinal	Nefalon	Nylon
Micromattique*	Polyester	Negastat*	Polyester
MicroSpun*	Polyester	Neochrome*	Rayon
MicroSupreme*	Polyester	Neoplex	Rayon
Miharahyo	Rayon	Nerane	Acetate
Mikron	Vinal	New color	Rayon
Minalon	Acetate	Newbray	Rayon
Minerva	Rayon	Newdull	Rayon
Minifil	Nylon	Newlow	Rayon
Minifil	Rayon	Nichibo	Rayon
Mirlon	Nylon	Nichire	Rayon
Misrnylon	Nylon	Niplon	Nylon
Misrylon	Nylon	Nirlon	Nylon
Mitsubishi	Vinal	Nishikalon	Vinyon
Modal*	Rayon	Nitiray	Nylon
Modanyl	Nylon	Nitlon	Acrylic
Modiglass	Glass	Nitrilon	Acrylic
Monofil 77	Rayon	Nitron	Acrylic
Monosheer	Nylon	Nittobo	Rayon
Montrel	Olefin	NM1000	Nylon
Moplen	Olefin	NM1103	Nylon
Movyl	Vinyon	NM1200	Nylon
Movilret	Vinyon	NM1400	Nylon
Moynel	Rayon	NM1500	Nylon
Multi-cupioni	Rayon	Nobricella	Rayon
Multi-strata	Rayon	Nomelle	Acrylic
Multisheer	Nylon	Nomex*	Nylon
MX108	Nylon	Nomex*	Aramid

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
Nopalón	Acetate	Ovignose	Vinyon
Novamat	Rayon	P-23	Polyester
Novatex	Rayon	Pa-Qel	Acrylic
Nublite	Rayon	Pan	Acrylic
Numa	Spandex	Pannakril	Acrylic
Nupron	Rayon	Paramafil	Rayon
Nupronium	Rayon	Paramount	Rayon
Nycel	Nylon	Parapro	Olefin
Nylco	Metallic	Parfe	Rayon
Nylenka	Nylon	Patlon	Olefin
Nylex	Nylon	PCU	Vinyon
Nylfil	Metallic	Pe ce	Vinyon
Nylfrance*	Nylon	PE	Polyester
Nyloft	Nylon	PE3100	Polyester
Nylsuisse	Nylon	Perfil	Vinyon
Nyma	Rayon	Perfilon	Nylon
Nymarilon	Acrylic	Perlaponit	Rayon
Nymata	Rayon	Perlargon	Nylon
Nymatco	ayon	Perlglo	Rayon
Nymcel	Rayon	Perlofil	Nylon
Nymcord	Rayon	Perlon	Nylon
Nymcrylon	Acrylic	Perlon-Hoechst	Nylon
Nymella	Rayon	Perlon-U	Spandex
Nypel	Nylon	Permalon	Saran
Nypel	Polyester	Petromat	Olefin
Nypel Polypro	Olefin	Pex	Olefin
Nytelle	Nylon	Phenylon	Aramid
Oceane	Acetate	Phillips 66 nylon	Nylon
Ohmi	Rayon	Phrilon	Nylon
Olane	Olefin	Phrix	Rayon
Oletex	Olefin	Phrix perlon	Nylon
Omni saran	Saran	Pil-Trol*	Acrylic
Onanth	Nylon	Pilray	Rayon
Ondelette	Rayon	Pittsburgh	Glass
Ondule	Rayon	Plavia	Rayon
Opaceta	Acetate	Ply-mat	Glass
Oplexmatt	Rayon	Plyloc	Nylon
Oriented	Saran	Plymouth	Olefin
Orlon*	Acrylic	Polan	Nylon
Ortalion*	Nylon	Polana	Nylon

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
Polargard	Polyester	Qiana	Nylon
Polarguard*	Polyester	Quallofil	Polyester
Polartec*	Polyester	Quilticel	Acetate
Polathene	Olefin	Quintess	Polyester
Poliafil	Nylon	Railan	Rayon
Poliafil	Olefin	Rainbow	Rayon
Politen-omni	Olefin	Ramelon	Vinyon
Polyamide*	Nylon	Random-set	Nylon
Polyarns	Nylon	Random-tone	Nylon
Polyarns	Vinyon	Ratujal	Rayon
Polyarns	Olefin	Raybrite MF	Metallic
Polyathylen-Draht	Olefin	Raybrite MM	Metallic
Polybolta	Olefin	Rayflex	Rayon
Polycrest	Olefin	Rayolanda	Rayon
Polyethylene*	Olefin	Raysorb	Rayon
Polyextra	Polyester	RD-100	Rayon
Polyloom	Olefin	Redon	Acrylic
Polymers	Olefin	Reemay	Polyester
Polymers	Nylon	Reevon	Olefin
Polynosic*	Rayon	Relon	Nylon
Polypro	Olefin	Remember	Acrylic
Polyprop-omni	Olefin	Rene 41	Metallic
Polypropylene*	Olefin	Resistat*	Nylon
Polywrap	Olefin	Retractable*	Vinyon
Pontova	Rayon	Revere	Rubber
PPG	Glass	Reymet	Metallic
Prelana	Acrylic	Reynolds	Metallic
Premier	Rayon	Rhodiaceata	Nylon
Prenylon	Nylon	Rhodiafil	Rayon
Prezenta	Rayon	Rhodialin	Acetate
Primaloft	Polyester	Rhodianil	Nylon
Pro-Tuft	Olefin	Rhofibre	Vinyon
Prolene	Olefin	Rhofil	Vinyon
Proloft	Olefin	Rhovyl*	Vinyon
Propylon	Olefin	Rhovyl T	Vinyon
Prostran	Olefin	Rhovyl 55	Vinyon
Puff Stuff	Polyester	Ribbon straw	Acetate
Purilon	Rayon	Richmond	Saran
Pylen	Olefin	Rilsan*	Nylon
Q-957	Saran	Rilson	Nylon

Fiber Name	Generic	Fiber Name	Generic
Rolan	Acrylic	Shurti	Olefin
Rotwyla	Rayon	Silene*	Acetate
Rovana	Saran	Silenka	Glass
Rovicella	Rayon	Silione	Glass
Royalene	Olefin	Silkon	Azlon
Roylon	Nylon	Silkwool	Azlon
Ruvea	Nylon	Silky Touch*	Nylon
Ryton	Sulfar	Silky Touch	Polyester
S-3	Nylon	Silon	Nylon
Samson	Nylon	Silon	Rayon
Sanderit	Nylon	Silpalon	Acrylic
Saniro	Modacrylic	Sinitex	Saran
Sanivq	Modacrylic	Sinsen	Acrylic
Sarelon	Azlon	Sirius	Rayon
Sarfa	Rayon	Skapalon	Nylon
Sarlon	Saran	Skenandoa	Rayon
Sastiga	Rayon	Skendo	Rayon
Sava	Rayon	Skybloom	Rayon
Sayelle*	Acrylic	Skyloft	Rayon
Scaldura	Rayon	Slovina	Rayon
Scaldyna	Rayon	SLR	Acetate
Schwarza	Rayon	SM-27	Rayon
Schwarza-polyamid-p	Nylon	Sniol	Vinyon
Sculptured estron	Acetate	So-lara	Acrylic
Sculptured chromspun	Acetate	Soalon	Triacetate
Sedura	Rayon	Softalon	Nylon
SEF	Modacrylic	Softglo	Rayon
Semi-dul	Rayon	Softglow	Nylon
Semmum	Rayon	Soluna	Polyester
Seraceta	Acetate	Sooflex	Nylon
Seratelle	Acetate	Soviden	Saran
Setilmat	Acetate	Spandelle	Spandex
Setilose	Acetate	Spanzelle*	Spandex
Setina	Acetate	Spark-l-lite	Saran
Shanton	Polyester	Sparkalure	Olefin
Shareen	Nylon	Sparkling	Nylon
Shimmereen*	Nylon	Speckelon	Nylon
Shinko	Rayon	Spectra*	Olefin
Shiro diafil	Rayon	Spectran	Acrylic
Shoeflex	Nylon	Spectran	Polyester

Fiber Name	Generic	Fiber Name	Generic
Spontex	Rayon	Super breda	Rayon
Spun-lo	Rayon	Super-narco	Rayon
Spun-black	Rayon	Super-suprenka	Rayon
Spunenka	Rayon	Super-rayflex	Rayon
Spungo	Rayon	Superarnum	Rayon
Spunlo	Rayon	Superflex	Rayon
Spunloc	Polyester	Superseas	Rayon
Stabilenka	Nylon	Superwhite	Acetate
Stainmaster	Nylon	Superwind	Rayon
Standard	Rayon	Supplex*	Nylon
Starbrite	Nylon	Supral	Rayon
Staticgard	Nylon	Supralon	Rayon
Steelon	Nylon	Supraska	Rayon
Stilon	Nylon	Suprema	Rayon
Strata	Rayon	Suprenka	Rayon
Strata-slub	Rayon	Supron	Nylon
Stratella	Rayon	Swina	Rayon
Stratifil	Glass	Synflex-N	Nylon
Stratimat	Glass	Synthofil	Vinal
Strawn	Rayon	Tacryl	Acrylic
Stretch ever	Spandex	Tactel*	Nylon
Strialine	Polyester	Tactel Micro*	Nylon
Strong Fibro	Rayon	Tactesse	Nylon
Stryton	Nylon	Tamashima	Rayon
Stylon	Nylon	Tango	Nylon
Suda	Rayon	TB-tex	Glass
Sudalon	Nylon	Teca	Acetate
Suede-skin	Rayon	Technora	Aramid
Suiko	Rayon	Tecron	Nylon
Suleine	Rayon	Teijin	Acetate
Summum	Rayon	Teijin	Rayon
Sunshine	Olefin	Teijn-tetoron	Polyester
Sunspun	Rayon	Tejido	Saran
Supac	Olefin	Telusa	Rayon
Super tenax	Rayon	Temptra	Rayon
Super Tuff	Olefin	Tenasco	Rayon
Super Microft	Polyester	Tenax	Rayon
Super-L	Rayon	Tencel*	Lyocell
Super-cordura	Rayon	Tendan	Rayon
Super white	Rayon	Tenkyo	Rayon

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
Tergal*	Polyester	Toyobo	Rayon
Teriber	Polyester	Toyotenax	Rayon
Terital*	Polyester	TR-draht	Polyester
Terlenka*	Polyester	Travema	Rayon
Ternel	Vinyon	Travis	Rayon
Teron	Polyester	Travis	Nytril
Terylen	Polyester	Trelon	Nylon
Terylene*	Polyester	Trevira microness	Polyester
Teteron	Polyester	Trevira*	Polyester
Tetlon	Polyester	Trialbene	Acetate
Tetoron*	Polyester	Trianti	Glass
Tetrolene	Polyester	Tricel	Acetate
Tetron	Polyester	Trilan	Acetate
Teviron	Vinyon	Trinova	Rayon
Textilion	Nylon	Trital	Rayon
Textra	Rayon	Tropic	Rayon
Textura	Polyester	Trvira	Polyester
Thermastat*	Polyester	Tubastra	Rayon
Thermax*	Polyester	Tubize	Rayon
Thermolite	Polyester	Tudenza	Rayon
Thermoloft	Polyester	Tufcel	Rayon
Thermovyl*	Vinyon	Tufflite profax	Olefin
Thick and thin	Rayon	Tufton	Olefin
Thiolan	Azlon	Tufton	Rayon
Thiozell	Azlon	Tusson	Rayon
Thozell	Rayon	TW 6208	Olefin
Tiaralon	Rayon	Twaron*	Aramid
Tilan	Azlon	Twisloc	Nylon
Timbrelle	Nylon	Ty EZ	Olefin
Tinselfil	Rayon	Tygan	Saran
Tinselon	Rayon	Tynex	Nylon
Tolalan	Rayon	Type C	Acetate
Topel	Rayon	Type F	Acetate
Toramomen	Rayon	Type K	Acetate
Toray-tetoron	Polyester	Type L	Acetate
Toray	Nylon	Tyrenka	Rayon
Toraylon	Acrylic	Tyrex	Rayon
Toris	Rayon	Tyron	Rayon
Totarn	Rayon	Tytite	Olefin
Tovis	Rayon	Tyvek	Olefin

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
Tyweld	Rayon	Vicara*	Azlon
Ultra-touch	Polyester	Vincel	Rayon
Ultra-bright	Nylon	Vinytan	Vinal
Ultramid	Nylon	Vinytan	Vinal
Ultrastrand	Glass	Virion	Rayon
Ultravat	Metallic	Viscalon 66	Rayon
Ultrenka	Rayon	Viscocard	Rayon
Ultrima	Rayon	Viscol	Rayon
Ultron*	Nylon	Viscor	Rayon
Unel	Spandex	Visil*	Rayon
Unicomb	Glass	Vistra	Rayon
Unifab	Glass	Vistra XTH	Rayon
Unifil	Olefin	Vistralon	Rayon
Uniformat	Glass	Vistron	Rayon
Uniglass	Glass	Vitata	Rayon
Unirove	Glass	Vitel	Polyester
Unistrand	Glass	Vitro-fibras	Glass
United	Saran	Vitro-Flex	Glass
Unitope	Glass	Vitro-Strand	Glass
Urylon	Spandex	Vitron	Glass
US Royalene	Olefin	Vituf	Polyester
Vairin	Spandex	Vivana*	Nylon
Vanilon	Nylon	Vive la Crepe	Nylon
Vanylon	Nylon	Vogt	Olefin
Variline	Nylon	Vonnel	Acrylic
Vectran*	Olefin	Voplex	Olefin
Velicren*	Modacrylic	Voplex	Vinyon
Velon LP	Olefin	Vybran	Acrylic
Velon	Saran	Vycron	Polyester
Venus	Rayon	Vydran	Acrylic
Verel*	Modacrylic	Vylor	Nylon
Veri-dull	Rayon	Vynylal	Vinal
Verranne	Glass	Vyrene*	Spandex
Vestan	Saran	WearDated*	Acrylic
Vestolen A	Olefin	WeatherBloc*	Acrylic
Vetroflex	Glass	Wellene	Polyester
Vetrotessile	Glass	Wellon	Nylon
Vetrotex RMP	Glass	Wellstrand	Polyester
Vetrotex*	Glass	Wellstrand	Nylon
Vibren	Rayon	Wetrelon	Nylon

<b>Fiber Name</b>	<b>Generic</b>	<b>Fiber Name</b>	<b>Generic</b>
WeveBac	Olefin	XTRA-dul	Rayon
Wikilana	Rayon	XTRA-tuff	Polyester
Wink	Metallic	Yuva	Nylon
Wipolan	Vinal	Z-54	Rayon
Wipolan	Azlon	Zantrel-Meryl*	Rayon
Wirilene	Olefin	Zefkrome	Acrylic
Wolcrylon	Acrylic	Zefran*	Nylon
Woolon	Vinal	Zefran	Acrylic
Worry Free	Nylon	Zefron	Polyester
WSF PE	Olefin	Zeftron*	Nylon
WSF PP	Olefin	Zehla	Rayon
Wynene	Olefin	Zehlasordin	Rayon
X-static	Nylon	Zellvag	Rayon
Xena	Rayon	Zetek	Nytril
XL	Rayon	Zycon	Azlon

What Every Member of the  
Trade Community Should Know About:

# *NAFTA Country of Origin Rules for Monumental & Building Stone*



An Advanced Level  
Informed Compliance Publication of the  
U.S. Customs Service

December, 1999

### NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

### *Publication History*

*First Issued: December, 1999*

### PRINTING NOTE:

This publication was designed for electronic distribution via the Customs Electronic Bulletin Board and Customs World Wide Web site (<http://www.customs.gov>) and is being distributed in a variety of formats. It was originally set up in Microsoft Word97®. Pagination and margins in downloaded versions may vary depending upon which word processor or printer you use. If you wish to maintain the original settings, you may wish to download the .pdf version, which can then be printed using the freely available Adobe Acrobat Reader®.

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*," which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs has issued a series of informed compliance publications, and videos, on new or revised Customs requirements, regulations or procedures, and a variety of classification and valuation issues.

The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on *NAFTA Country of Origin Rules for Monumental & Building Stone* as part of a series of informed compliance publications regarding the classification and origin of imported merchandise. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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## INTRODUCTION

In a previous informed compliance publication entitled *What Every Member of the Trade Community Should Know About: NAFTA Eligibility and Building Stone*, issued in March 1998, the rules of origin for eligibility under the North American Free Trade Agreement (NAFTA) were discussed—i.e., whether or not a particular importation of stone from a NAFTA country is subject to the lower NAFTA rates of duty. Under the North American Free Trade Agreement—involving the United States, Canada (CA) and Mexico (MX)—merchandise produced in NAFTA countries may be eligible for reduced rates of duty under certain circumstances. The previous publication dealt with the rules of origin covering NAFTA eligibility for building stone provided for in General Note 12 of the Harmonized Tariff Schedule of the United States (HTS).

This publication deals exclusively with the NAFTA country of origin rules as applied to monumental or building stone. The Annex 311 rules for determining the country of origin of NAFTA goods for marking purposes (as well as certain other purposes) are set forth in the Code of Federal Regulations, 19 CFR Part 102. See T.D. 96-48, published in 61 Fed Reg 28932 [June 6, 1996]. Pursuant to Annex 311 of the North American Free Trade Act, these rules must be used when Customs determines the country of origin of goods processed in Canada or Mexico for marking purposes. The country of origin rules are also used when Customs determines whether the CA or MX rate is applicable to originating goods that have been processed in more than one NAFTA country prior to importation into the United States.

On the Internet these rules may be found at the following web site: <http://www.nafta-customs.org>.

19 CFR 102.11 sets forth a hierarchy of rules for determining country of origin that must be followed in order. Under 19 CFR 102.11(a)(1), when goods are wholly obtained or produced entirely in a specific NAFTA country, that country will be regarded as the country of origin of the merchandise. Under 19 CFR 102.11(a)(2), when goods are produced exclusively from domestic materials originating in a particular NAFTA country, that country will be regarded as the country of origin.

When monumental or building stone is extracted from the earth in a specific NAFTA country (merchandise classifiable in Chapter 25 of the HTS), that country is the country of origin. In addition, when worked monumental or building stone and articles of monumental or building stone (Chapter 68 merchandise) are produced in a NAFTA country exclusively from stone material which was extracted from the earth of that country, that country is clearly regarded as the country of origin.

The situations described above are relatively straightforward. This publication focuses primarily on the more complex area of tariff shifts under the NAFTA country of origin rules. The tariff shift rule is the next step in the hierarchy of rules for determining country of origin under 19 CFR 102.11—the next rule which is applied if a good is neither

wholly obtained or produced in a single country, nor produced in a country exclusively from domestic materials.

Under 19 CFR 102.11(a)(3), when a good is neither wholly obtained or produced in a single country nor produced in a country exclusively from domestic materials, the country of origin may be the country in which a "tariff shift" (a change in classification from one provision to another) took place, if that shift is enumerated in 19 CFR 102.20. In accordance with these rules, when goods are transformed in the territory of a specific country, that country will be regarded as the country of origin when each foreign material (i.e., a material from another country) incorporated in the merchandise underwent an applicable change in tariff classification set out in 19 CFR 102.20.

When stone originating in one country (non-NAFTA or NAFTA) is further worked in a second country (a NAFTA country) and then exported to the United States from that country, the country of exportation may or may not be regarded as the country of origin of the finished product. Certain tariff shifts (changes in classification from one tariff provision to another) will result in a change in the country of origin of the merchandise under 19 CFR 102, while other tariff shifts will not. This publication will discuss the tariff shifts that change the country of origin of building stone under the NAFTA country of origin rules and those which do not.

When no tariff shift takes place, or a change in classification takes place but this shift is not listed in 19 CFR 102.20, the determination of country of origin will be based on the next rule in the hierarchy of rules enumerated in 19 CFR 102.11. This rule, 19 CFR 102.11(b), indicates that the country of origin will be the country of origin of the single material that determines the essential character of the good.

#### TARIFF SHIFTS

As explained above, a tariff shift is a change in classification from one HTS provision to another. Specifically, in the context of this discussion, a tariff shift is a change that occurs when merchandise from one country is further processed in a second country. Certain specific tariff shifts are listed in 19 CFR 102.20 while others are not.

When more than one country is involved in the processing of merchandise ultimately exported to the United States from a NAFTA country, the country from which the merchandise was immediately exported may or may not be regarded as the country of origin of the finished product. This determination is dependent on the precise degree of processing performed in the country which exported the merchandise to the United States and whether or not this work constitutes an allowable tariff shift under a specific country of origin tariff shift rule in 19 CFR 102.20.

Each example presented in this publication discusses a stone from a non-NAFTA country that is then further processed in a NAFTA country. For purposes of the NAFTA country of origin rules, note that the principles illustrated by these examples also apply to stone from a NAF-

TA country that is then further processed in a second NAFTA country. The key issue under the country of origin rules is whether the original country or the country in which additional processing takes place represents the country of origin under 19 CFR 102.

Nevertheless, the examples presented focus on building stone from a non-NAFTA country that is further worked in a NAFTA country. This scenario is much more common for this type of merchandise than the case of stone from a NAFTA country that is further worked in a second NAFTA country.

The discussion of tariff shifts in this publication assumes that the reader has knowledge of the principles that govern the classification of building stone. These principles were explained in the previously issued publications on **MARBLE** and **GRANITE**. The earlier publications discussed various HTS provisions for building stone (including various subheadings under headings 2515, 2516 and 6802) and explained distinctions in classification which are based on the degree to which a stone has been worked. These distinctions are crucial to an understanding of the tariff shifts which change the country of origin of stone and those shifts which do not change the stone's country of origin under the NAFTA country of origin rules, 19 CFR 102.

A great deal of monumental and building stone is produced in NAFTA countries. However, the NAFTA countries also import a great deal of stone from non-NAFTA countries. In some instances this stone is worked sufficiently in the NAFTA country to change the country of origin of the merchandise to the NAFTA country (i.e., when an allowable tariff shift has taken place under a specific rule in 19 CFR 102.20). However, in other instances an allowable tariff shift has not taken place under the NAFTA country of origin marking rules and the non-NAFTA country remains the country of origin.

Importers must know whether or not stone imported from Canada or Mexico originated in that country. If the stone originated in a non-NAFTA country and was then worked in a NAFTA country, the exporter or producer in Canada or Mexico must retain records providing detailed information on the precise form in which the merchandise arrived in the NAFTA country and the precise extent of the work performed in the NAFTA country. This information is crucial to a determination of the country of origin.

The following is a discussion of the rules regarding NAFTA country of origin tariff shifts under 19 CFR 102.20 for importations of various building stones classifiable under specific HTS provisions.

#### **SUBHEADINGS 2515.11 AND 2515.12**

Regarding importations of merchandise classifiable in headings 2515 and 2516, the NAFTA country of origin marking rules only allow tariff shifts from other headings. 19 CFR 102.20 permits a "change to heading 2501 through 2516 from any other heading, including another heading within that group."

By their very nature, items classifiable in headings 2515 and 2516 (crude building stones and building stones worked only to a very slight extent) are very unlikely to have undergone tariff shifts from other headings. Under 19 CFR 102, the country of origin for merchandise of headings 2515 and 2516 can only be the country in which the stone was quarried.

Thus, the country of origin for crude or roughly trimmed marble (classifiable in subheading 2515.11.00) quarried in a NAFTA country is clearly the NAFTA country. Similarly, the country of origin of marble quarried in a NAFTA country and "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" in the same NAFTA country (subheading 2515.12.10) would be that country. See 19 CFR 102.11(a)(1).

Under 19 CFR 102, the country of origin for stone classifiable in subheadings 2515.11 and 2515.12 will be the country in which that stone was *quarried*. If the cutting takes place in the same country, the country of origin obviously remains the same. Furthermore, even if the cutting takes place in a second country, the country of origin for heading 2515 merchandise remains the country in which the stone was quarried because tariff shifts from one subheading to another within heading 2515 do not change the country of origin under 19 CFR 102.20.

Therefore, when subheading 2515.11 marble is quarried in a non-NAFTA country and then processed into subheading 2515.12 marble in a NAFTA country, the country of origin remains the non-NAFTA country. Since this tariff shift is not enumerated in 19 CFR 102.20, the country of origin is determined based on 19 CFR 102.11(b)—the country of origin of the material that represents the essential character of the good—i.e., the country in which the stone was quarried.

**Example: Crude or roughly trimmed marble (2515.11) from Italy is "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" (2515.12.10) in Canada. What is the country of origin of the merchandise?**

**Answer: Italy.** Under the NAFTA country of origin marking rules, 19 C.F.R. 102.20, tariff shifts from one subheading to another within heading 2515 will not change the country of origin. The shift from subheading 2515.11 to subheading 2515.12 does not change the country of origin of the merchandise. This shift is not enumerated in 19 CFR 102.20. Therefore, the country of origin will be determined under 19 CFR 102.11(b) based on the country of origin of "the single material that imparts the essential character of the good." The country of origin of the stone remains Italy, the country in which the stone was quarried.

#### **SUBHEADING 2515.20**

Crude or roughly trimmed limestone with an apparent specific gravity of 2.5 or more is classifiable in subheading 2515.20.00, HTS. When this product is quarried in a NAFTA country, the country of origin of the

merchandise is clearly the NAFTA country. In the same manner, when crude limestone quarried in a NAFTA country is "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" in the same NAFTA country, the country of origin of this merchandise (also classifiable in subheading 2515.20.00) would be that country. See 19 CFR 102.11(a)(1).

However, when crude limestone (classifiable in subheading 2515.20) quarried in a non-NAFTA country is "merely cut, by sawing or otherwise into blocks or slabs of a rectangular shape" in a NAFTA country, the country of origin of this merchandise (also classifiable in subheading 2515.20) remains the non-NAFTA country. No tariff shift has taken place. Therefore, under 19 CFR 102.11(b), the country of origin of the heading 2515 stone is determined based on the country of origin of the material which represents the essential character of the good—i.e., the country in which the stone was quarried.

#### **SUBHEADINGS 2516.11 AND 2516.12**

The country of origin of crude or roughly trimmed granite (subheading 2516.11.00) quarried in a NAFTA country is clearly the NAFTA country. In the same manner, when granite is quarried in a NAFTA country and "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" (subheading 2516.12.00) in the same NAFTA country, the country of origin would be that country.

However, the NAFTA country of origin rules (19 C.F.R. 102.20) only permit tariff shifts to heading 2516 from another heading. Under these rules, tariff shifts from subheading to subheading within heading 2516 will not change the country of origin of the stone.

The country of origin for granite classifiable in subheadings 2516.11 and 2516.12 will be the country in which the stone was quarried. Even if the cutting takes place in a second country, the country of origin for heading 2516 merchandise remains the country in which the stone was quarried. Therefore, when subheading 2516.11 granite is quarried in a non-NAFTA country and then converted into subheading 2516.12 granite in a NAFTA country, the country of origin remains the non-NAFTA country.

**Example: Crude granite (2516.11) quarried in Italy is "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" (2516.12) in Canada. What is the country of origin of the merchandise?**

**Answer: Italy.** The shift from subheading 2516.11 to subheading 2516.12 will not change the stone's country of origin. The country in which the merchandise was quarried (Italy) remains the country of origin. Since the shift from subheading 2516.11 to subheading 2516.12 is not listed in 19 CFR 102.20, the country of origin will be determined under 19 CFR 102.11(b) based on the country of origin (Italy) of the material which represents the essential character of the good.

**SUBHEADING 2516.90**

The principles outlined above also apply to other monumental or building stone classifiable in subheading 2516.90.00, HTS. The country of origin of crude or roughly trimmed serpentine, basalt, diorite, gabbro, diabase, syenite or gneiss (classifiable in subheading 2516.90) quarried in a NAFTA country is obviously that NAFTA country. Similarly, when these stones quarried in a NAFTA country are "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" in the same NAFTA country, the country of origin of the merchandise (also classifiable in subheading 2516.90) would be that country. See 19 CFR 102.11(a)(1).

However, when crude serpentine, basalt, diorite, gabbro, diabase, syenite or gneiss (classifiable in subheading 2516.90) quarried in a non-NAFTA country is "merely cut by sawing or otherwise into blocks or slabs of a rectangular shape" in a NAFTA country, the country of origin of this merchandise (also classifiable in subheading 2516.90) remains the non-NAFTA country. No tariff shift has taken place. Under 19 CFR 102.11(b), the country of origin of this stone would be the country of origin of the material which represents the essential character of the good, i.e., the country in which the stone was quarried.

**SUBHEADINGS 2517.41 AND 2517.49**

Subheadings 2517.41 and 2517.49 provide for granules, chippings and powder of stones of heading 2515 or 2516. Subheading 2517.41 covers marble granules, chippings and powder, while subheading 2517.49 covers granules, chippings and powder of other stones. See the previous informed compliance publications on **MARBLE** and **GRANITE**.

Under the NAFTA country of origin rules, 19 C.F.R. 102, tariff shifts within heading 2515 or within heading 2516 will not change the country of origin; however, tariff shifts from heading 2515 or 2516 to heading 2517 will change the country of origin. 19 CFR 102.20 permits a change to subheading 2517.41 or 2517.49 from any other heading. Under 19 CFR 102.11(a)(3), when a tariff shift listed in 19 CFR 102.20 takes place, the country in which that shift occurs becomes the country of origin.

**Example 1: Crude marble (2515.11), from Spain is converted into marble granules, chippings or powder (2517.41) in Canada. What is the country of origin of the merchandise?**

**Answer: Canada.** Under 19 CFR 102.20, a tariff shift from heading 2515 to subheading 2517.41 will change the stone's country of origin. See 19 CFR 102.11(a)(3).

**Example 2: Crude granite (2516.11) from Greece is converted into granite granules, chippings or powder (2517.49) in Canada. What is the country of origin of the merchandise?**

**Answer: Canada.** Under 19 CFR 102.20, a tariff shift from heading 2516 to subheading 2517.49 will change the stone's country of origin. See 19 CFR 102.11(a)(3).

Note that the tariff shift rules for subheadings 2517.41 and 2517.49 under the NAFTA country of origin rules (19 CFR 102) are different from the tariff shift rules for these subheadings under the rules of origin for NAFTA eligibility [General Note 12(t) of the HTS]. The rules of origin for NAFTA eligibility do not permit a tariff shift from heading 2515 or 2516 to subheading 2517.41 or 2517.49 for purposes of conferring NAFTA origin, while the NAFTA country of origin rules do allow this tariff shift for marking and other purposes. Please see our previous informed compliance publication on **NAFTA ELIGIBILITY AND BUILDING STONE**.

#### **SUBHEADING 6802.91**

Clearly, when Chapter 25 stone is quarried in a NAFTA country and processed into worked stone (6802) in the same NAFTA country, that country is the country of origin of the merchandise. In addition, when stone classifiable in heading 2515 or 2516 from a non-NAFTA country is processed into worked stone (6802) in a NAFTA country, the country of origin will be the NAFTA country. 19 CFR 102.20 specifically allows a change to heading 6801 through 6808 from any other heading, including another heading within that group. Under 19 CFR 102.11(a)(3), when a tariff shift listed in 19 CFR 102.20 takes place, the country in which that shift occurs becomes the country of origin.

**Example 1: Crude or roughly trimmed marble (2515.11) from Spain is converted into worked marble (6802.91)—e.g., it is polished or ground or chamfered, etc.—in Canada. What is the country of origin of the merchandise?**

**Answer: Canada.** Under the NAFTA country of origin rules, a tariff shift from subheading 2515.11 to subheading 6802.91 will change the country of origin of the stone. Any shift from another heading (e.g., 2515 or 2516) to heading 6802 will change the stone's country of origin. See 19 CFR 102.11(a)(3) and 19 CFR 102.20.

Readers of this publication should review the classification principles explained in the previous informed compliance publications **MARBLE** and **GRANITE**. In particular, importers and exporters of stone should understand the distinctions between stone classifiable in Chapter 25 and stone classifiable in heading 6802, as well as the distinctions between different Chapter 25 subheadings and different subheadings of heading 6802. This information is crucial since tariff shifts from heading 2515 or 2516 to heading 6802 change the country of origin of the merchandise, while shifts between different subheadings of heading 2515, between different subheadings of heading 2516 and between different subheadings of heading 6802 do not change the country of origin.

As explained in the previous publications, any one of numerous operations (e.g., dressing with a pick, bushing hammer or chisel; sand-dressing; grinding; polishing; chamfering; molding; furrowing with the drag-comb; etc.) can shift the classification of a product from subheading 2515.11 (crude marble) to subheading 6802.91 (worked marble).

See the Explanatory Notes to headings 2515 and 6802. When subheading 2515.11 merchandise from a non-NAFTA country is converted into subheading 6802.91 merchandise in a NAFTA country, the country of origin will be the NAFTA country. However, when certain heading 6802 operations are performed in a non-NAFTA country and additional operations are then performed in a NAFTA country (i.e., when heading 6802 merchandise from a non-NAFTA country is further processed in a NAFTA country with the classification remaining in heading 6802), an allowable tariff shift has not taken place under 19 C.F.R. 102.20 and the non-NAFTA country will remain the country of origin.

**Example 2: Marble is ground, chamfered or beveled in Italy (6802.91) and then polished in Canada (6802.91). What is the country of origin of the stone?**

**Answer: Italy.** When marble is worked in a non-NAFTA country to a point where it is classifiable in subheading 6802.91 and additional processing then takes place in a NAFTA country (with classification remaining in subheading 6802.91), no tariff shift has taken place and the non-NAFTA country remains the country of origin. Since no tariff shift has taken place, the country of origin will be determined under 19 CFR 102.11(b) based on the country of origin (Italy) of the material which represents the essential character of the good.

**Example 3: A marble slab from Spain (6802.91.05) is worked beyond the point of being a slab and converted into subheading 6802.91.15 merchandise (Marble: Other) in Canada (e.g., it is cut or beveled more than three thirty seconds of an inch in Canada). What is the country of origin of this merchandise?**

**Answer: Spain.** A change in classification from subheading 6802.91.05 ("Marble: Slabs") to subheading 6802.91.15 ("Marble: Other") will not change the country of origin under the NAFTA country of origin rules, 19 CFR 102. Since an allowable tariff shift under 19 CFR 102.20 has not taken place, the country of origin will be determined under 19 CFR 102.11(b) based on the country of origin (Spain) of the material which represents the essential character of the good.

[Our earlier publication on **MARBLE** explains the distinctions between a marble "slab" (subheading 6802.91.05) and marble worked beyond the point of being a slab (subheading 6802.91.15).]

**Example 4: Marble is "simply cut or sawn, with a flat or even surface" (i.e., cut beyond the point allowable in Chapter 25) in Greece (6802.21) and then further worked in any way (e.g., beveled or chamfered or polished, etc.) in Canada (6802.91). What is the country of origin of this merchandise?**

**Answer: Greece.** A change in classification from subheading 6802.21 to subheading 6802.91 will not change the country of origin of the stone under 19 CFR 102.20. Therefore, in this example the country of origin for the subheading 6802.21 mer-

chandise remains the country of origin for the subheading 6802.91 stone. A shift from one subheading to another subheading within heading 6802 will not change the stone's country of origin under the NAFTA country of origin rules. Since the shift from subheading 6802.21 to subheading 6802.91 is not enumerated in 19 CFR 102.20, the country of origin will be determined under 19 CFR 102.11(b) based on the country of origin (Greece) of the material which represents the essential character of the good.

On the other hand, when marble "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" in a non-NAFTA country (2515.12.10) is further worked in any way (e.g., polished, beveled, etc.) in a NAFTA country (6802.91), the country of origin will be the NAFTA country, since the shift from heading 2515 to heading 6802 will change the country of origin under 19 CFR 102.20. In accordance with 19 CFR 102.11(a)(3), when a tariff shift listed in 19 CFR 102.20 takes place, the country in which that shift occurs becomes the country of origin.

The examples discussed above indicate the significance of the distinction between the type of cutting and sawing described in heading 2515 and the type of cutting and sawing referred to in the 6802.2 subheadings (6802.21 through 6802.29). While simple cutting from the quarry block is permitted for stone classifiable in heading 2515 or 2516, any cutting which goes beyond this point (e.g., smoothing the stone) requires classification in heading 6802. See the previous publications on the classification of stone (**MARBLE** and **GRANITE**) as well as the Explanatory Notes on headings 2515, 2516 and 6802 for details regarding the type of cutting permitted in Chapter 25 and the type of cutting which dictates classification in Chapter 68.

Under the NAFTA country of origin rules (19 CFR 102), tariff shifts from heading 2515 to heading 6802 will change the country of origin of the stone, while shifts from any of the 6802.2 subheadings (6802.21 through 6802.29) to any of the 6802.9 subheadings (6802.91 through 6802.99) will not change the country of origin. Therefore, the precise type of cutting that takes place in each country is crucial to the determination of the stone's country of origin.

#### **SUBHEADING 6802.92**

When crude or roughly trimmed limestone (2515.20) from a non-NAFTA country is converted into worked limestone (6802.92) in a NAFTA country (e.g., it is polished or ground or chamfered in the NAFTA country), the country of origin will be the NAFTA country. Under 19 CFR 102.20, shifts to headings 6801 through 6808 from any other heading will change the country of origin. In accordance with 19 CFR 102.11(a)(3), when a tariff shift listed in 19 CFR 102.20 takes place, the country in which that shift occurs becomes the country of origin. However, when heading 6802 limestone from a non-NAFTA country is fur-

ther worked in a NAFTA country (with the classification remaining in heading 6802), an allowable tariff shift has not taken place under the country of origin rules and the non-NAFTA country remains the country of origin.

**Example 1: Limestone is ground, beveled or chamfered in Italy (6802.92) and then polished in Canada (6802.92). What is the country of origin of this stone?**

**Answer: Italy.** When limestone is worked in a non-NAFTA country to a point where it is classifiable in subheading 6802.92 and additional processing then takes place in a NAFTA country (with the classification remaining in 6802.92), no tariff shift has taken place and the non-NAFTA country remains the country of origin. Under 19 CFR 102.11(b), the country of origin for this merchandise is Italy, the country of origin of the material that imparts the essential character of the good.

**Example 2: Limestone is simply cut or sawn with a flat or even surface (i.e., cut beyond the point allowable in Chapter 25) in Greece (6802.22). It is then further worked in any way (e.g., beveled or chamfered or polished, etc.) in Canada (6802.92). What is the country of origin of the subheading 6802.92 merchandise?**

**Answer: Greece.** The shift from subheading 6802.22 to subheading 6802.92 will not change the country of origin under the NAFTA country of origin rules. The country of origin for the subheading 6802.22 stone remains the country of origin for the subheading 6802.92 stone. A shift from one subheading to another within heading 6802 will not change the country of origin under 19 CFR 102.20. Since the tariff shift from subheading 6802.22 to subheading 6802.92 is not enumerated in 19 CFR 102.20, the country of origin in this example will be determined under 19 CFR 102.11(b) based on the country of origin (Greece) of the material which represents the essential character of the good.

#### **SUBHEADING 6802.93**

When crude or roughly trimmed granite (subheading 2516.11) from a non-NAFTA country is converted into worked granite (subheading 6802.93) in a NAFTA country, the country of origin becomes the NAFTA country. Any shift from heading 2516 to heading 6802 will change the country of origin under the NAFTA country of origin rules, 19 CFR 102. In accordance with 19 CFR 102.11(a)(3), when a tariff shift listed in 19 CFR 102.20 takes place, the country in which that shift occurs becomes the country of origin. The shift from subheading 2516.11 to subheading 6802.93 is covered by 19 CFR 102.20.

However, shifts within heading 6802 do not change the country of origin under 19 CFR 102.20. When granite is processed in a non-NAFTA country to a point where it is classifiable in heading 6802 and additional processing is then performed in a NAFTA country (with the classifica-

tion remaining in heading 6802), the country of origin remains the non-NAFTA country.

**Example 1:** Crude or roughly trimmed granite from Spain (2516.11) is polished, ground or chamfered in Canada (6802.93). What is the country of origin of this merchandise?

**Answer:** Canada. The shift from subheading 2516.11 to subheading 6802.93 is an allowable tariff shift (i.e., a shift enumerated in 19 CFR 102.20) that will change the country of origin under the NAFTA country of origin rules. Any shift from another heading (e.g., heading 2516 or 2515) to heading 6802 will change the country of origin of the stone. Under 19 CFR 102.11(a)(3), when a tariff shift listed in 19 CFR 102.20 takes place, the country in which that shift occurs becomes the country of origin.

**Example 2:** Granite is ground, beveled or chamfered in Italy (6802.93) and then polished in Canada (6802.93). What is the country of origin of this stone?

**Answer:** Italy. When granite is worked in a non-NAFTA country to a point where it is classifiable in subheading 6802.93 and additional processing then takes place in a NAFTA country (with classification remaining in subheading 6802.93), no tariff shift has taken place and the non-NAFTA country remains the country of origin. Under 19 CFR 102.11(b), the country of origin for this merchandise is Italy, the country of origin of the material which imparts the essential character of the good.

**Example 3:** Granite is simply cut or sawn with a flat or even surface (i.e., cut beyond the point allowable in Chapter 25) in Italy (6802.23). It is then further worked in any way (e.g., beveled or chamfered or polished, etc.) in Canada (6802.93). What is the country of origin of the subheading 6802.93 stone?

**Answer:** Italy. The shift from subheading 6802.23 to subheading 6802.93 will not change the country of origin under the NAFTA country of origin rules. Therefore, the country of origin for the subheading 6802.23 merchandise remains the country of origin for the subheading 6802.93 merchandise. A shift from one subheading to another within heading 6802 will not change the country of origin under 19 C.F.R. 102.20. Since the tariff shift from subheading 6802.23 to subheading 6802.93 is not enumerated in 19 CFR 102.20, the country of origin in this example will be determined under 19 CFR 102.11(b) based on the country of origin (Italy) of the material which represents the essential character of the good.

However, when granite is merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" in a non-NAFTA country (2516.12) and then further worked in any way (e.g., beveled, polished, etc.) in a NAFTA country (6802.93), the country of origin will be the NAFTA country. The shift from heading

**2516 to heading 6802 will change the country of origin under 19 CFR 102.20. In accordance with 19 CFR 102.11(a)(3), when a tariff shift listed in 19 CFR 102.20 takes place, the country in which that shift occurs becomes the country of origin.**

Since shifts from heading 2516 to heading 6802 change the country of origin under the NAFTA country of origin rules, while shifts from any of the 6802.2 subheadings (6802.21 through 6802.29) to any of the 6802.9 subheadings (6802.91 through 6802.99) do not change the country of origin, it is crucial that importers and exporters understand the distinction between the type of cutting and sawing described in heading 2516 and the type of cutting and sawing referred to in subheadings 6802.21 through 6802.29.

While simple cutting from the quarry block is allowable for stone classifiable in heading 2516 or 2515, any cutting which goes beyond this point (e.g., smoothing the stone) requires that the merchandise be classified in heading 6802. See previous publications on the classification of stone (**MARBLE** and **GRANITE**) as well as the Explanatory Notes on headings 2515, 2516 and 6802 for details regarding the type of cutting permitted in Chapter 25 and the type of cutting which dictates classification in Chapter 68.

#### **SUBHEADING 6802.99**

The principles explained above also apply to other worked monumental or building stone (e.g., serpentine, basalt, diorite, diabase, gabbro, syenite or gneiss) classifiable in subheading 6802.99.

When crude or roughly trimmed serpentine, basalt, diorite, diabase, gabbro, syenite or gneiss (2516.90) from a non-NAFTA country is converted into worked serpentine, basalt, diorite, diabase, gabbro, syenite or gneiss (6802.99) in a NAFTA country, the country of origin becomes the NAFTA country. The change in classification from heading 2516 to heading 6802 is an allowable tariff shift which changes the country of origin under the NAFTA country of origin rules, 19 CFR 102. However, under these rules, no tariff shifts within heading 6802 will change the country of origin.

**Example 1: Crude or roughly trimmed serpentine from Taiwan (2516.90) is polished, ground or chamfered in Canada (6802.99). What is the country of origin of this stone?**

**Answer: Canada.** The shift from subheading 2516.90 to subheading 6802.99 changes the country of origin under the NAFTA country of origin rules. Any shift from another heading (e.g., 2516 or 2515) to heading 6802 changes the country of origin under 19 CFR 102.20. In accordance with 19 CFR 102.11(a)(3), when a tariff shift listed in 19 CFR 102.20 takes place, the country in which that shift occurs becomes the country of origin.

**Example 2: Gabbro is ground, beveled or chamfered in Greece (6802.99) and then polished in Canada (6802.99). What is the country of origin of this merchandise?**

**Answer:** Greece. When subheading 6802.99 merchandise from a non-NAFTA country is subjected to additional processing in a NAFTA country (with the classification remaining in subheading 6802.99), no tariff shift has taken place and the non-NAFTA country remains the country of origin. In this example, the country of origin for this merchandise under 19 CFR 102.11(b) is Greece, the country of origin of the material that represents the essential character of the good.

**Example 3:** Basalt is simply cut or sawn with a flat or even surface (i.e., cut beyond the point allowable in Chapter 25) in Italy (6802.29). It is then beveled or polished in Canada (6802.99). Which country is regarded as the country of origin?

**Answer:** Italy. The change in classification from subheading 6802.29 to subheading 6802.99 will not change the country of origin under the NAFTA country of origin rules. The country of origin for the subheading 6802.29 stone remains the country of origin for the subheading 6802.99 stone. A shift from one subheading to another within heading 6802 will not change the stone's country of origin under 19 CFR 102.20. Since the tariff shift from subheading 6802.29 to subheading 6802.99 is not enumerated in 19 CFR 102.20, the country of origin in this example will be determined under 19 CFR 102.11(b) based on the country of origin (Italy) of the material which represents the essential character of the good.

[Note that the discussion of worked serpentine classifiable in subheading 6802.99 refers to building stone (i.e., slabs and tiles) of serpentine. Articles of serpentine are classifiable in subheading 7116.20. See the previous publication on **MARBLE** for more detailed information on the classification of serpentine products.]

#### **HEADING 6810**

Worked monumental or building stone is classifiable in heading 6802 assuming the stone is natural. However, artificial stone is classifiable in heading 6810. The Explanatory Notes to headings 6802 and 6810 indicate that artificial stone is formed when pieces of natural stone or crushed or powdered natural stone (e.g., limestone, granite, marble) is agglomerated with plastics, cement, lime or other binders.

Under 19 CFR 102.20, tariff shifts to heading 6810 from other headings will change the country of origin. The country of origin rules allow a change to subheading 6810.11 through 6810.19 from any other heading, a change to subheading 6810.91 from any other subheading, and a change to subheading 6810.99 from any other heading.

When pieces of natural stone or crushed or ground natural stone (classifiable in Chapter 25 headings) from a non-NAFTA country and plastic resins (classifiable in Chapter 39 headings) from a non-NAFTA country are agglomerated to form artificial stone (6810) in a NAFTA country, the country of origin becomes the NAFTA country. The shift to heading 6810 from any other heading will change the country of origin

under the NAFTA country of origin rules, 19 CFR 102.20. Under 19 CFR 102.11(a)(3), when a tariff shift listed in 19 CFR 102.20 takes place, the country in which that shift occurs becomes the country of origin.

In addition, a shift from another 6810 subheading to subheading 6810.91 will change the country of origin. However, for all of the other 6810 subheadings (6810.11 through 6810.19 and 6810.99), a shift from one 6810 subheading to another 6810 subheading will not change the country of origin under 19 C.F.R. 102.

#### THE IMPORTER'S AND EXPORTER'S RESPONSIBILITIES

An importer who purchases monumental or building stone from a firm in a NAFTA country and the exporter or producer of this merchandise should have an understanding of the NAFTA country of origin rules discussed in this publication (as well as the principles of NAFTA eligibility discussed in our previous publication, *What Every Member of the Trade Community Should Know About: NAFTA Eligibility And Building Stone*). Prior to importation, the precise manner in which the stone was quarried and processed should be determined. The exporter or producer should have information on each step in the processing of the stone and the country in which each step was performed. The proper country of origin should be determined in accordance with the country of origin marking rules outlined in 19 C.F.R. 102.

The exporter is responsible for completing a certificate of origin for the merchandise. The correct country of origin must be indicated on this document.

The importer and the exporter should know whether or not every step in the quarrying and working of the stone was performed in a single NAFTA country. If some work was done in one country (NAFTA or non-NAFTA) while other steps were subsequently performed in the NAFTA country from which the merchandise was exported to the United States, the exporter must have information which indicates whether a tariff shift took place which changes the country of origin under 19 CFR 102. The exporter must retain all documents and records (invoices, bills of lading, other shipping documents) that reflect the shipment and purchase of the stone from the first country to the country from which the merchandise will be exported to the United States. The exporter or producer must retain all records and documents that indicate the manner in which the stone was worked in each country.

Often an exporter or producer of stone from a NAFTA country deals in stones that originated in that country as well as stones that originated in different countries. Some products may undergo allowable tariff shifts that change the country of origin while others do not. Therefore, in order to allow Customs to determine the country of origin of the merchandise, if fungible stone is used, the inventory management methods outlined in Schedule X of the Uniform Customs Regulations must be applied. See the Appendix to Section 181 of the Customs Regulations, 19 CFR 181.

The importer and the exporter should know which tariff shifts change country of origin and which tariff shifts do not change country of origin under the NAFTA country of origin rules. The country of origin will change when heading 2515 or 2516 merchandise from one country is converted into heading 6802 merchandise in a second country. However, the country of origin will not change in any of the following situations:

- When stone of subheadings 6802.21 through 6802.99 from the first country is converted into stone of subheadings 6802.91 through 6802.99 in the second country.
- When stone of subheadings 6802.91 through 6802.99 from the first country is further worked in the second country with the classification remaining in subheadings 6802.91 through 6802.99.
- When subheading 2515.11 stone from the first country is converted into subheading 2515.12 stone in the second country.
- When subheading 2516.11 stone from the first country is converted into subheading 2516.12 stone in the second country.

While tariff shifts from heading 2515 or 2516 to heading 6802 will change the country of origin under the NAFTA country of origin rules (19 CFR 102), shifts from one subheading to another within heading 2515, within heading 2516 or within heading 6802 will not change the country of origin under these rules. The exporter and the importer of stone from a NAFTA country should understand these principles.

The importer and the exporter should be aware of the distinctions between different HTS subheadings for stone. These classification distinctions are crucial factors in any determination of whether a tariff shift has taken place. The differences between stone classifiable in heading 2515 or 2516 and stone classifiable in heading 6802 should be understood. In addition, the importer and the exporter should understand the distinctions between different subheadings within heading 2515 or 2516 and different subheadings within heading 6802.

A great deal of stone is produced in the NAFTA countries. However, the NAFTA countries also import a great deal of stone from non-NAFTA countries. In some instances this stone is worked sufficiently in the NAFTA country to change the country of origin of the merchandise under the NAFTA country of origin rules, 19 CFR 102. However, in other instances the non-NAFTA stone is not worked at all in the NAFTA country or the work that takes place does not constitute a specified tariff shift. Therefore, information on the precise work performed in each country is crucial. The exporter or producer in the NAFTA country is required to keep clear records documenting each step in the processing of the stone and the country in which each step takes place.

When more than one country is involved in the production of a stone, the importer and the exporter or producer should know the precise form of the stone when it was shipped from the first country to the second country, every step which was then performed in the second coun-

try and the final form in which the merchandise was exported to the United States. This information is essential to a determination of the country of origin under 19 CFR 102.

Prior to the importation of a particular stone product from a NAFTA country, an importer or an exporter or producer who is not certain regarding the country of origin under 19 CFR 102 may request that U.S. Customs issue a binding ruling on this question. Note Article 509 of NAFTA and 19 CFR 181. The ruling request should include information on the exact manner in which the stone was worked. If the production of the stone took place in more than one country, the ruling request should indicate the country in which each step in the processing of the stone took place.

The ruling request should also include a sample of the item. If the product is too large to submit as a sample, the inquirer should submit a portion of the stone which includes sections of the face as well as the side (or edge) and corner.

#### INVOICING REQUIREMENTS

Invoicing requirements for importations of monumental or building stone involving questions of NAFTA country of origin under 19 CFR 102 are the same as the general invoicing requirements for stone discussed in previous publications. See the informed compliance publications on **MARBLE, GRANITE and NAFTA ELIGIBILITY AND BUILDING STONE**. Also see Section 141.86 of the Customs Regulations (19 CFR 141.86) for general invoicing requirements.

The style number or brand name of the stone is very important and it is helpful when this information appears on the invoice along with the marks, numbers and symbols that identify the merchandise. In addition, the invoice should indicate the type of stone being imported in accordance with geological definitions (granite, basalt, gabbro, marble, limestone, serpentine, etc.) as well as the unit value, total value of the shipment, quantity and terms of sale.

Furthermore, the invoice should describe the exact form of the stone that is being imported and the precise extent to which it has been worked. Since the precise manner in which the stone was worked is often crucial to a NAFTA country of origin determination, the following questions should be answered. It would be very helpful if this information appears on the invoice:

- 1) Is the product an article, crude or roughly trimmed stone, crushed or ground stone, an unworked slab, a worked slab, etc.?
- 2) Has the stone simply been cut from the quarry block or has it been further worked? Has it been precision cut, honed, edge worked, beveled, dressed with a tool, furrowed, sand dressed, planed, ground, polished, chamfered, molded, ornamented, carved, etc.?
- 3) What is the precise extent to which the stone has been worked? (It would be very helpful if the invoice provides an exact description of all operations applied to either the face or edges of the stone.)
- 4) What is the area and thickness of the product?

When stone is exported from a NAFTA country to the United States and more than one country was involved in the production of that stone, the invoice from the seller in the country of exportation should present a full and accurate description of the merchandise including information on the precise manner in which the stone was worked in that country. When the stone is processed in more than one country before exportation to the United States, it is also important that information on the precise extent to which the stone was worked in the first country be present on the invoice representing the sale from the first country to the second country.

The original invoice from the company in the first country (as well as any other shipping documents) should be retained by the exporter in the second country. In order to allow U.S. Customs to track the precise work which was done in each country, it is important that the same style number or brand name be retained through the chain of documents (i.e., the invoice from the exporter in the second country should use the same style number which was used on the invoice documenting the sale of the original stone from the first country). By examining all the documents, Customs should be able to determine the extent to which the stone was worked in each country and whether or not a tariff shift that changes the country of origin took place.

If the exporter or producer in the NAFTA country originally purchased the stone from another firm in the same NAFTA country, the exporter or producer should retain the invoice from the first firm documenting the precise work that the original company performed on the stone. If, in turn, the first firm in the NAFTA country had purchased the stone from a company in another country, the invoice and other documents representing the original sale from the first country must be retained. The invoice from the first country should document all the work performed on the stone in that country.

What Every Member of the  
Trade Community Should Know About:

# *Customs Value*



A Basic Level  
Informed Compliance Publication of the  
U.S. Customs Service

Revised December, 1999

**NOTICE:**

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

*Publication History**First Issued: May, 1996**Revised: December, 1999***PRINTING NOTE:**

This publication was designed for electronic distribution via the Customs Electronic Bulletin Board and Customs World Wide Web site (<http://www.customs.gov>) and is being distributed in a variety of formats. It was originally set up in Microsoft Word97®. Pagination and margins in downloaded versions may vary depending upon which word processor or printer you use. If you wish to maintain the original settings, you may wish to download the .pdf version, which can then be printed using the freely available Adobe Acrobat Reader®.

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*," which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs has issued a series of informed compliance publications, and videos, on new or revised Customs requirements, regulations or procedures, and a variety of classification and valuation issues.

The Value Branch, International Trade Compliance Division, Office of Regulations and Rulings has prepared this publication on *Customs Value* as part of a series of informed compliance publications regarding Customs classification and valuation. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

STUART P. SEIDEL,  
Assistant Commissioner,  
Office of Regulations and Rulings.

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### INTRODUCTION

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs Service. In almost all cases, the goods are required to be "entered," that is, declared to the Customs Service, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs Service. As part of the entry process, goods must be "classified" (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use "reasonable care" to "enter," "classify," and "value" the goods and provide any other information necessary to enable the Customs Service to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Under the authority of 19 U.S. Code §1500(a), it is Customs responsibility to fix the final appraisement of merchandise in accordance with 19 U.S. Code §1401a. This occurs after the importer of record, using reasonable care, has filed the declared value with the U.S. Customs Service.

### HOW IS IMPORTED MERCHANDISE APPRAISED?

All merchandise imported into the United States is subject to appraisement. The Trade Agreements Act of 1979 (the Act) sets forth the rules for appraisement of imported merchandise. The Act sets forth six different methods of appraisement, and their order of preference. Under the Act, the preferred method of appraisement is **transaction value**. Generally, the appraised value of all merchandise imported into the United States is the transaction value of the goods. In the event the merchandise cannot be appraised on the basis of transaction value, the secondary bases are considered in the following order:

- Transaction Value of Identical Merchandise
- Transaction Value of Similar Merchandise
- Deductive Value
- Computed Value
- Values if Other Values Cannot be Determined

The importer may request the reversal of Deductive Value and Computed Value at the time the entry summary is filed.

### WHAT IS TRANSACTION VALUE?

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to:

- A. The packing costs incurred by the buyer.
- B. Any selling commission incurred by the buyer.
- C. The value, apportioned as appropriate, of any assist.

D. Any royalty or license fee that the buyer is required to pay, directly or indirectly, as a condition of the sale.

E. The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

These amounts (items A through E) are added only to the extent that each 1) is not included in the price, and 2) is based on information accurately establishing the amount. If sufficient information is not available, then the transaction value cannot be determined and the next basis of appraisement, in order of precedence, must be considered.

#### **WHAT IS THE PRICE ACTUALLY PAID OR PAYABLE?**

The price actually paid or payable for the imported merchandise is the **total payment**, excluding international freight, insurance, and other C.I.F. charges, that the buyer makes to the seller. This payment may be direct or indirect. Some examples of an indirect payment are when the buyer settles all or part of a debt owed by the seller, or when the seller to settle a debt he owes the buyer reduces the price on a current importation. Such indirect payments are part of the transaction value.

#### **EXAMPLE:**

X Company in Dayton, Ohio pays \$2,000 to Y's Toy Factory in Paris, France for a shipment of toys. The \$2,000 consists of \$1,850 for the toys and \$150 for ocean freight and insurance. Y's Toy Factory would have charged X Company \$2,200 for the toys; however, since Y's Toy Factory owed X Company \$350, Y's Toy Factory only charged \$1,850 for this particular shipment of toys. Assuming the transaction is acceptable, what is the transaction value?

The transaction value of the imported merchandise is \$2,200, that is, the sum of the \$1,850 plus the \$350 indirect payment. Because the transaction value excludes C.I.F. charges, the \$150 ocean freight and insurance charge is excluded.

However, if a buyer performs an activity on his own account, other than those listed in the foregoing A through E, then the activity is not considered an indirect payment to the seller, and is not part of the transaction value. This applies even though the buyer's activity might be regarded as benefitting the seller. One example of such activity is advertising.

#### **WHAT ARE PACKING COSTS?**

Packing costs means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

#### **WHAT ARE SELLING COMMISSIONS?**

Selling commission means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

### WHAT IS AN ASSIST?

The apportioned value of any assist constitutes part of the transaction value of the imported merchandise. First the value of the assist is determined; then the value is pro-rated to the imported merchandise. (See below for further discussion of assists)

### WHAT IS A ROYALTY OR LICENSE FEE?

Royalty or license fees that a buyer must pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States will be included in the transaction value. Ultimately whether a royalty or license fee is dutiable will depend on 1) whether the buyer had to pay them as a condition of the sale and b) to whom and under what circumstances they were paid. The dutiability status will have to be decided on a case-by-case basis.

### WHAT ARE PROCEEDS?

Any proceeds resulting from the subsequent sale, disposal, or use of the imported merchandise that accrue directly or indirectly to the seller are dutiable.

### ARE ANY AMOUNTS EXCLUDED FROM TRANSACTION VALUE?

Yes. The amounts to be excluded from transaction value are:

1. The cost, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation in the United States.
2. If identified separately, any reasonable cost or charge incurred for:

Constructing, erecting, assembling, maintaining, or providing technical assistance with respect to the goods after importation into the United States, or

Transporting the goods after importation.

3. The customs duties and other Federal taxes, including any Federal excise tax for which sellers in the United States are ordinarily liable.

### ARE THERE ANY LIMITATIONS ON THE USE OF TRANSACTION VALUE?

Yes, if any of these limitations are present, then transaction value cannot be used as the appraised value, and the next basis of value will be considered. The limitations can be divided into four groups:

1. Restrictions on the disposition or use of the merchandise.
2. Conditions for which a value cannot be determined.
3. Proceeds of any subsequent resale, disposal or use of the merchandise, accruing to the seller, for which an appropriate adjustment to transaction value cannot be made.
4. Related-party transactions where the transaction value is not acceptable.

### WHEN IS TRANSACTION VALUE "ACCEPTABLE" IN RELATED-PARTY TRANSACTIONS?

The term "acceptable" means that the relationship between the buyer and seller did not influence the price actually paid or payable. Examining the circumstances of sale will help make this determination.

Alternatively "acceptable" can also mean that the transaction value of the imported merchandise closely approximates any one of the following test values, provided these values relate to merchandise exported to the United States at or about the same time as the imported merchandise:

1. The transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States.
2. The deductive value or computed value for identical merchandise or similar merchandise.

The test values are used for comparison only. They do not form a substitute basis of valuation.

In determining if the transaction value is close to one of the foregoing test values, an adjustment is made if the sales involved differ in:

Commercial levels

Quantity levels

The costs, commissions, values, fees, and proceeds described in A through E as additions to the price actually paid or payable

The costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related

Questions concerning related parties require a detailed analysis of the transaction and should be reviewed carefully by persons with expertise in the application of the value law.

### I NEED TO KNOW MORE ABOUT "ASSISTS."

#### WHAT IS AN "ASSIST?"

An assist is any of the items listed below that the buyer of imported merchandise provides directly or indirectly, free of charge or at a reduced cost, for use in the production or sale of merchandise for export to the United States.

Materials, components, parts, and similar items incorporated in the imported merchandise.

Tools, dies, molds, and similar items used in producing the imported merchandise.

Merchandise consumed in producing the imported merchandise.

Engineering, development, artwork, design work, and plans and sketches that are undertaken outside the United States and are necessary for the production of the imported merchandise. "Engineering, development," etc. will not be treated as an assist if the service or work is 1) performed by a person domiciled within the

United States, 2) performed while that person is acting as an employee or agent of the buyer of the imported merchandise, and 3) incidental to other engineering, development, artwork, design work, or plans or sketches undertaken within the United States.

#### **HOW IS THE VALUE OF AN ASSIST DETERMINED?**

In determining the value of an assist, the following rules apply:

1. The value is either a) the cost of acquiring the assist, if acquired by the importer from an unrelated seller, or b) the cost of producing the assist, if produced by the importer or a person related to the importer.
2. The value includes the cost of transporting the assist to the place of production.
3. The value of assists used in producing the imported merchandise is adjusted to reflect use, repairs, modifications, or other factors affecting the value of the assists. Assists of this type include such items as tools, dies, and molds.

#### **EXAMPLE:**

If the importer previously used the assist, regardless of whether he acquired or produced it, the original cost of acquisition or of production must be decreased to reflect the use. Alternatively repairs and modifications may result in the value of the assist having to be adjusted upwards.

4. In the case of engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States, the value is a) the cost of obtaining copies of the assist, if the assist is available in the public domain; b) the cost of the purchase or lease if the assist was bought or leased by the buyer from an unrelated person; c) the value added outside the United States, if the assist was produced in the United States and one or more foreign countries.

So far as possible, the buyer's commercial record system is used to determine the value of an assist, especially such assists as engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States.

#### **EXAMPLE:**

A U.S. buyer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the imported merchandise. The U.S. importer bought the U.S. produced designs from an engineering company in the U.S. for submission to his foreign supplier. Should the appraised value of the merchandise include the value of the assist?

No, design work undertaken in the U.S. may not be added to the price actually paid or payable.

#### **EXAMPLE:**

A U.S. buyer purchases merchandise from a foreign producer. The price actually paid or payable includes the cost of U.S. design incor-

porated in the merchandise. Is there any authority to deduct the cost of the U.S. design from the price actually paid or payable?

No authority exists to deduct such costs from the price actually paid or payable.

#### **EXAMPLE:**

A U.S. buyer supplied molds free of charge to the foreign seller. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country. Should the appraised value of the merchandise include the value of the molds?

Yes. It is an addition required to be made to transaction value.

#### **HOW IS THE VALUE OF AN ASSIST APPORTIONED?**

Having determined the value of an assist, the next step is to apportion that value to the imported merchandise. The apportionment is done reasonably and according to generally accepted accounting principles. By the latter is meant any generally recognized consensus or substantial authoritative support regarding the recording and measuring of assets and liabilities and changes therein, the disclosing of information, and the preparing of financial statements.

The method used to apportion the value of the assist depends on the details. For example, suppose the entire anticipated production using the assist is to be exported to the United States. Then the value of the assist could be pro-rated any one of several ways: over the first shipment if the importer wants to pay duty on the entire value at one time, over the number of units produced up to the time of the first shipment, or over the entire anticipated production. If the entire anticipated production is not destined for the United States, some other method of apportionment will be used that is consistent with generally accepted accounting principles.

#### **WHAT IF THE IMPORTED MERCHANDISE CANNOT BE APPRAISED ON THE BASIS OF TRANSACTION VALUE?**

The imported merchandise will be appraised in the order listed at the beginning of this pamphlet.

#### **WHAT IS THE TRANSACTION VALUE OF IDENTICAL MERCHANDISE?**

When the transaction value cannot be determined, then the customs value of the imported goods being appraised is the transaction value of identical merchandise. The value of the identical merchandise must be a previously accepted customs value.

#### **WHAT IS THE TRANSACTION VALUE OF SIMILAR MERCHANDISE?**

If merchandise identical to the imported goods cannot be found or an acceptable transaction value for such merchandise does not exist, then the customs value is the transaction value of similar merchandise. The

value of the similar merchandise must be a previously accepted customs value.

#### **WHAT IS DEDUCTIVE VALUE?**

If the transaction value of imported merchandise, of identical merchandise, or of similar merchandise cannot be determined, then deductive value is calculated for the merchandise being appraised. Deductive value is the next basis of appraisement at the time the entry summary is filed, to be used unless the importer designates computed value as the preferred method of appraisement. If computed value was chosen and subsequently determined not to exist for customs valuation purposes, then the basis of appraisement reverts to deductive value.

If an assist is involved in a sale, that sale cannot be used in determining deductive value. So any sale to a person who supplies an assist for use in connection with the production or sale for export of the merchandise concerned is disregarded for purposes of determining deductive value.

Basically, deductive value is the resale price in the United States after importation of the goods, with deductions for certain items. Generally, the deductive value is calculated by starting with a unit price and making certain additions to and deductions from that price.

#### **WHAT DEDUCTIONS CAN BE MADE?**

Certain items are not part of deductive value and must be deducted from the unit price. These items are as follows:

1. Commissions usually paid or the addition usually made for profit and general expenses, in connection with sales in the U.S. of imported merchandise of the same class or kind as the merchandise concerned
2. Transportation/Insurance Costs
3. Customs Duties/Federal Taxes
4. Value of Further Processing (used only when the merchandise is not sold in the condition as imported)

#### **CAN A DEDUCTION BE MADE FOR BOTH COMMISSIONS AND PROFITS?**

No, the unit price is reduced by either a commission paid or the addition usually made for profit and general expenses.

#### **WHAT IS COMPUTED VALUE?**

The next basis of appraisement is computed value. If customs valuation cannot be based on any of the values previously discussed, then computed value is considered. This value is also the one the importer can select to precede deductive value as a basis of appraisement.

Computed value consists of the sum of the following items:

1. Materials, fabrication, and other processing used in producing the imported merchandise
2. Profit and general expenses
3. Any assist, if not included in items 1 and 2
4. Packing costs

**WHAT IS THE VALUE IF OTHER VALUES CANNOT BE DETERMINED?**

If none of the previous five values can be used to appraise the imported merchandise, then the customs value must be based on a value derived from one of the five previous methods, reasonably adjusted as necessary. The value so determined should be based, to the greatest extent possible, on previously determined values. Only data available in the United States is to be used.

**WHAT IS THE IMPORTER OF RECORD'S OBLIGATION TO PROVIDE INFORMATION TO CUSTOMS?**

The Mod Act requires the importer of record, or authorized agent, to complete an entry by filing with Customs the declared value of the merchandise, and other documentation and information as is necessary to enable Customs to properly assess duties on the imported merchandise. The Mod Act requires the importer of record to use reasonable care in filing the information with Customs.

Customs Form 7501, the entry summary, requires that the importer of record or authorized agent declare that to the best of the declarant's knowledge, the entry fully discloses the true prices, values, quantities, rebates, drawbacks, fees, commissions and royalties, and is true and correct, and that all goods or services provided to the seller of the merchandise either free or at reduced cost are fully disclosed. In order for an importer to ensure that the value information provided to Customs is complete, it may be necessary for an importer to coordinate with all relevant corporate departments, such as research and development, contracting and shipping (traffic). Failure to do so might be considered a failure to exercise reasonable care, and may lead to delays in releasing your merchandise or to the imposition of penalties.

**WHAT RECORDS MUST BE KEPT?**

The Tariff Act requires any owner, importer, consignee, importer of record, entry filer or other party who imports merchandise into the U.S. to make, keep and render for examination and inspection, records which pertain to the importation of the merchandise and are normally kept in the ordinary course of business, for a period of time not to exceed five years, from the date of entry. The term "records" includes electronic data. These records would include purchase orders, payment information, shipping records, ledgers, research and development records, etc. In addition, certain records, required for the entry of merchandise must be produced upon demand by Customs. Failure to produce required entry records could lead to delays in release of your merchandise or to the imposition of penalties. See *What Every Member of the Trade Community Should Know About: Records and Recordkeeping Requirements* for additional information.

**ADDITIONAL INFORMATION****THE INTERNET**

The U.S. Customs Service's home page on the Internet's World Wide Web, provides the trade community with current, relevant information

regarding Customs operations and items of special interest. The site posts information—which includes proposed regulations, news releases, Customs publications and notices, etc.—that can be searched, read on-line, printed or downloaded to your person computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site links to the Customs Electronic Bulletin Board (CEBB), an older electronic system on which Customs notices and drafts were posted. After December, 1999 the CEBB will be only accessible through the web site. The web site also links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. Customs web site also contains a wealth of information of interest to a broader public than the trade community—to international travelers, for example.

The Customs Service's web address is <http://www.customs.gov>.

### CUSTOMS REGULATIONS

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone 202-512-1800. A bound, 1999 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Customs Regulations from April 1998 through March 1999, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin*, described below.

### CUSTOMS BULLETIN

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as Customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

### IMPORTING INTO THE UNITED STATES

This publication provides an overview of the importing process and contains general information about import requirements. The 1998 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and the Customs Service by shifting to the im-

porter the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The 1998 edition contains a new section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between Customs and the import community, wherein Customs communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that Customs is provided accurate and timely data pertaining to his or her importations.

Single copies may be obtained from local Customs offices or from the Office of Public Affairs, U.S. Customs Service, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the Customs web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

#### VIDEO TAPES

The Customs Service has prepared a series of video tapes in VHS format for the trade community and other members of the public. As of the date of this publication, four tapes are available and are described below.

If you would like more information on any of the tapes below, or if you would like to order them, please send a written request to: U.S. Customs Service, Office of Regulations and Rulings, Suite 3.4A, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a *check or money order drawn on a U.S. financial institution* and made payable to U.S. Customs Service. Prices include postage.

- *Rules of Origin for Textiles and Apparel Products* is a two-hour tape aimed at increasing understanding of the new rules, which became effective July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms, or it can be ordered from the U.S. Customs Service for \$20.00.
- *Customs Compliance: Why You Should Care* is a 30-minute tape divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in the importing or exporting business with an overview of the significant features of the Customs Modernization Act and the reasons to adopt new strategies in order to minimize legal exposure under the Act.  
Part II is intended primarily for import/export compliance officers, legal departments and company officers. About 12 minutes long, Part II explains why Customs and the trade can benefit from sharing responsibilities under Customs laws. It also provides viewers with legal detail on record keeping, po-

tential penalties for non-compliance, and on the Customs prior-disclosure program. The cost is \$15.00.

- *Account Management: Team Building for World Trade*, a 13½-minute tape on account management, discusses what account management is and why there is a need for it. Account Management is a new approach to working with the trade in which a company is treated as an account, rather than being dealt with on a transaction by transaction basis. The tape includes discussions with Customs account managers and representatives of importers ("accounts") relating to the benefits of account management from the perspectives of the both the Customs Service and the trade community. The cost is \$15.00.
- *General-Order Warehousing: Rules for Handling Unclaimed Merchandise*, 90 minutes long, was prepared jointly by the Customs Service and the trade community on the subject of general-order merchandise (unclaimed goods). The tape includes question and answer discussions that define procedures required to implement the new general-order laws and regulations and why there is a need to have effective procedures for handling unclaimed goods. The cost is \$15.00.

#### INFORMED COMPLIANCE PUBLICATIONS

The U.S. Customs Service has prepared a number of Informed Compliance publications in the *What Every Member of the Trade Community Should Know About*: series. As of the date of this publication, the subjects listed below were available.

- 1. Customs Value (<sup>1</sup>5/96, Revised 12/99)
- <sup>1</sup> 2. Raw Cotton: Tariff Classification and Import Quotas (5/13/96)
- <sup>1</sup> 3. NAFTA for Textiles & Textile Articles (5/14/96)
- <sup>1</sup> 4. Buying & Selling Commissions (6/96)
- <sup>1</sup> 5. Fibers & Yarn (8/96)
- <sup>3</sup> 6. Textile & Apparel Rules of Origin (<sup>1</sup>10/96, Revised 11/98)
- <sup>1</sup> 7. Mushrooms (10/96)
- <sup>1</sup> 8. Marble (11/96)
- <sup>1</sup> 9. Peanuts (11/96)
- <sup>1</sup> 10. Bona Fide Sales & Sales for Exportation (11/96)
- <sup>2</sup> 11. Caviar (2/97)
- <sup>2</sup> 12. Granite (2/97)
- <sup>2</sup> 13. Distinguishing Bolts from Screws (5/97)
- <sup>2</sup> 14. Internal Combustion Piston Engines (5/97)
- <sup>2</sup> 15. Vehicles, Parts and Accessories (5/97)
- <sup>2</sup> 16. Articles of Wax, Artificial Stone and Jewelry (8/97)
- <sup>2</sup> 17. Tariff Classification (11/97)
- <sup>2</sup> 18. Classification of Festive Articles (11/97)
- <sup>3</sup> 19. Ribbons & Trimmings (1/98)
- <sup>3</sup> 20. Agriculture Actual Use (1/98)
- <sup>3</sup> 21. Reasonable Care (1/98)
- <sup>3</sup> 22. Footwear (1/98)

- <sup>3</sup> 23. Drawback (3/98)
- <sup>3</sup> 24. Lamps, Lighting and Candle Holders (3/98)
- <sup>3</sup> 25. NAFTA Eligibility and Building Stone (3/98, Revised 12/98)
- <sup>3</sup> 26. Rules of Origin (5/98)
- <sup>3</sup> 27. Records and Recordkeeping Requirements (6/98)
- <sup>3</sup> 28. ABC's of Prior Disclosure (6/98)
- <sup>3</sup> 29. Gloves, Mittens and Mitts (6/98)
- <sup>3</sup> 30. Waste & Scrap under Chapter 81 (6/98)
- <sup>3</sup> 31. Tableware, Kitchenware, Other Household Articles and Toilet Articles of Plastics (11/98)
- <sup>3</sup> 32. Textile & Apparel Rules of Origin Index of Rulings (11/98)
- 33. Knit to Shape Apparel Products (1/99)
- 34. Hats and Other Headgear (under HTSUS 6505) (3/99)
- 35. Customs Enforcement of Intellectual Property Rights (6/99)
- 36. Classification of Children's Apparel (6/99)
- 37. Accreditation of Laboratories and Gaugers (9/99)
- 38. Classification of Sets (9/99)
- 39. Marking Requirements for Wearing Apparel (9/99)
- 40. Fiber Trade Names & Generic Terms (11/99)
- 41. NAFTA Country of Origin Rules for Monumental & Building Stone (12/99)

■ indicates publications which are, or will be, available for downloading from the Customs Electronic Bulletin Board or through Customs Home Page on the Internet <http://www.customs.gov>;

<sup>1</sup> denotes reprinted in *30/31 Customs Bulletin No. 50/1*, January 2, 1997;

<sup>2</sup> denotes reprinted in *32 Customs Bulletin No. 2/3*, January 21, 1998;

<sup>3</sup> denotes reprinted in *32 Customs Bulletin No. 51*, December 23, 1998.

Check the Customs Electronic Bulletin Board and the Customs Internet website for more recent publications.

#### VALUE PUBLICATIONS

*Customs Valuation under the Trade Agreements Act of 1979* is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 CFR §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

*Customs Valuation Encyclopedia* (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy

may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may be also be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

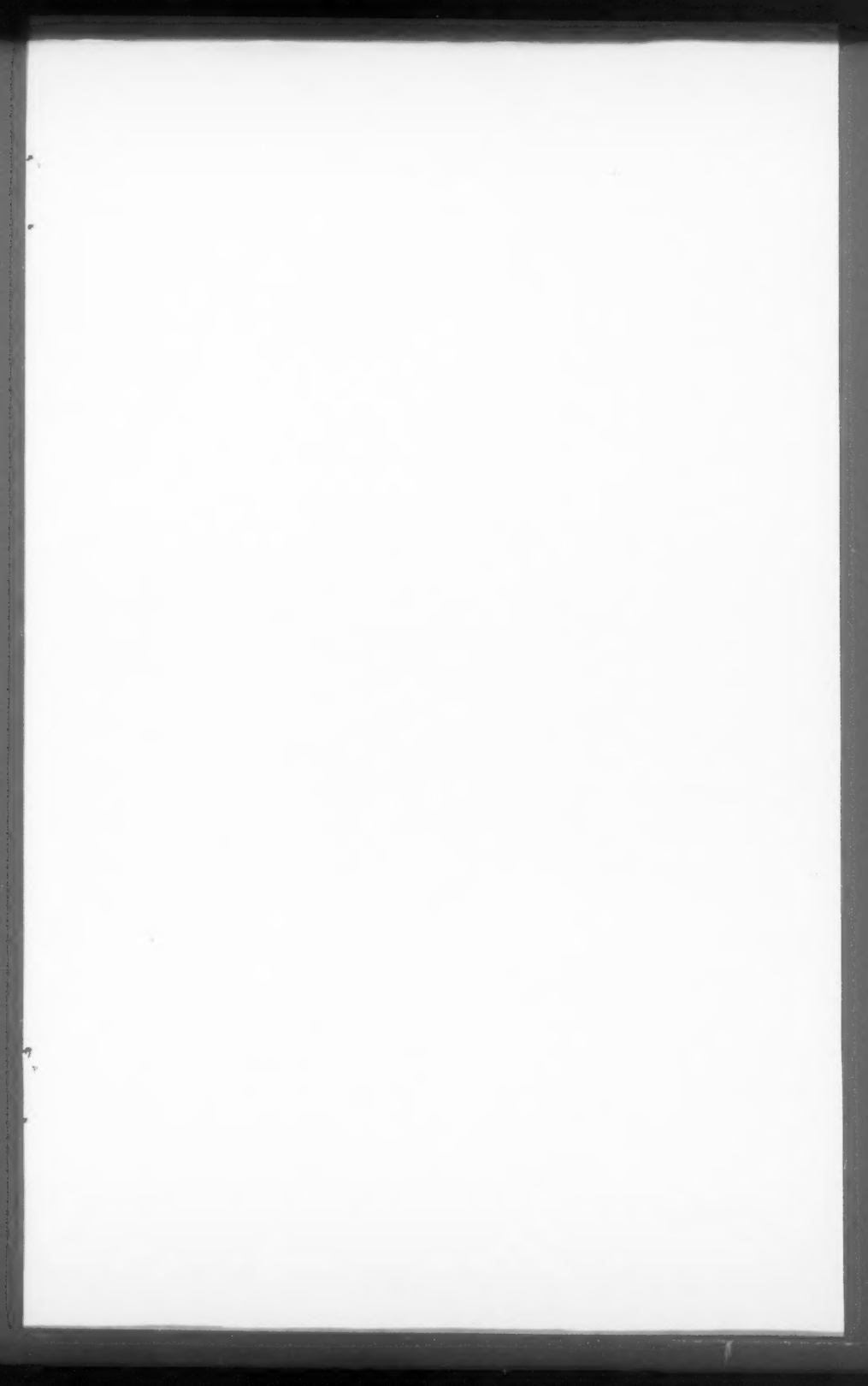
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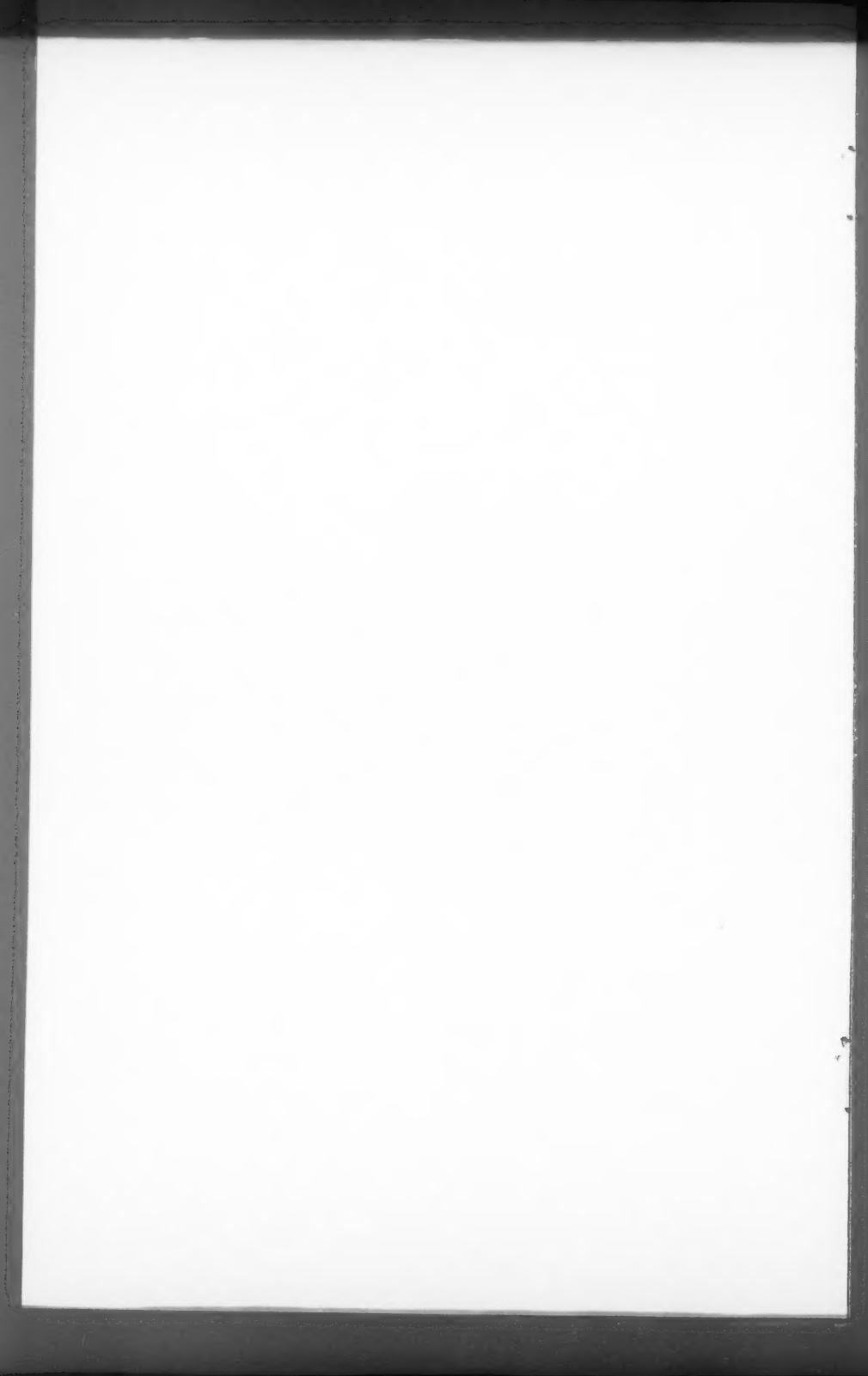
The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).

**REPORT SMUGGLING 1-800-BE-ALERT**



Visit our Internet website: <http://www.customs.gov>





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U.S. G.P.O. 1999-461-850-80064

